

# Title 460 WAC

## SECURITIES DIVISION

### (DEPARTMENT OF LICENSING)

<b>Chapters</b>			
460-10A	<b>Definitions.</b>	460-16-080	Subscription agreement. [Order 11, § 460-16-080, filed 3/3/72. Formerly WAC 308-132-186.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-16A	<b>General rules.</b>	460-16-100	Offering circular. [Order 11, § 460-16-100, filed 3/3/72. Formerly WAC 308-132-100.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-17A	<b>Uniform limited offering registration.</b>	460-16-150	Other documents required for registration by coordination. [Order 11, § 460-16-150, filed 3/3/72. Formerly WAC 308-132-184.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-20A	<b>Broker-dealers and salesmen.</b>	460-16-210	Nonvoting stock. [Order 10, § 460-16-210, filed 11/12/71. Formerly WAC 308-132-310.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-24A	<b>Investment advisers.</b>	460-16-220	Cheap stock. [Order 10, § 460-16-220, filed 11/12/71. Formerly WAC 308-132-340.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-28A	<b>Advertisements.</b>	460-16-260	Options and warrants. [Order 10, § 460-16-260, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-31A	<b>Real estate programs exceeding five million dollars.</b>	460-16-270	Standards for options and warrants. [Order 10, § 460-16-270, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-32A	<b>Real estate programs not exceeding five million dollars.</b>	460-16-320	Quarterly reports. [Order 11, § 460-16-320, filed 3/3/72. Formerly WAC 308-132-174.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-33A	<b>Regulations concerning securities involving mortgages, trust deeds or property sales contracts.</b>	460-16-350	Financial statements. [Order 11, § 460-16-350, filed 3/3/72. Formerly WAC 308-132-176.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-34A	<b>Oil and gas programs.</b>	460-16-390	Notice of termination of offering—Change of officers. [Order 11, § 460-16-390, filed 3/3/72. Formerly WAC 308-132-090.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-36A	<b>Real estate investment trusts.</b>	460-16-400	Promoter's investment. [Order 10, § 460-16-400, filed 11/12/71. Formerly WAC 308-132-180.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-40A	<b>Investment companies.</b>	460-16-410	Promotional securities—Standard. [Order 11, § 460-16-410, filed 3/3/72. Formerly WAC 308-132-110.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-42A	<b>Exempt securities.</b>	460-16-420	Reimbursement for promotion expense—Standard. [Order 11, § 460-16-420, filed 3/3/72. Formerly WAC 308-132-120.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-44A	<b>Exempt transactions.</b>	460-16-430	Escrow. [Order 11, § 460-16-430, filed 3/3/72. Formerly WAC 308-132-030.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-46A	<b>Corporate limited offering exemption.</b>	460-16-440	Consent to transfer. [Order 11, § 460-16-440, filed 3/3/72. Formerly WAC 308-132-040.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.
460-52A	<b>Nonprofit organizations.</b>	460-16-450	Waivers. [Order 11, § 460-16-450, filed 3/3/72. Formerly WAC 308-132-050.] Repealed by Order
460-60A	<b>Financial statements and reports—Contents and filing requirements.</b>		
460-64A	<b>Capital requirements—Definitions.</b>		
460-65A	<b>Regulations on procedures related to the entry of orders.</b>		
460-70	<b>Commodity broker-dealers.</b>		
460-80	<b>Franchise registration.</b>		
460-82	<b>Broker/selling agent.</b>		
<b>DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE</b>			
<b>Chapter 460-10</b>			
<b>DEFINITIONS</b>			
460-10-040	Definitions—Costs of selling. [Order 11, § 460-10-040, filed 3/3/72. Formerly WAC 308-132-020.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-10A WAC.		
460-10-100	Definitions—Recognized securities manuals. [Order 11, § 460-10-100, filed 3/3/72. Formerly WAC 308-132-178.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-10A WAC.		
<b>Chapter 460-16</b>			
<b>GENERAL RULES FOR ISSUANCE</b>			
460-16-050	Opinion of counsel. [Order 11, § 460-16-050, filed 3/3/72. Formerly WAC 308-132-080.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.		
460-16-060	Bond on treasurer. [Order 11, § 460-16-060, filed 3/3/72. Formerly WAC 308-132-070.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-16A WAC.		

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

**Chapter 460-20**  
**BROKER-DEALERS**

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

**Chapter 460-24**  
**INVESTMENT ADVISERS**

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

- 11, § 460-24-060, filed 3/3/72. Formerly WAC 308-132-220.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-100 Advertising—General policy. [Order 11, § 460-24-100, filed 3/3/72. Formerly WAC 308-132-230.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-110 Advertising—Matters of general application. [Order 11, § 460-24-110, filed 3/3/72. Formerly WAC 308-132-240.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-120 Advertising—Opinions and conclusions. [Order 11, § 460-24-120, filed 3/3/72. Formerly WAC 308-132-250.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-130 Advertising—Descriptive superlatives. [Order 11, § 460-24-130, filed 3/3/72. Formerly WAC 308-132-260.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-140 Advertising—Guarantees of success. [Order 11, § 460-24-140, filed 3/3/72. Formerly WAC 308-132-270.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-150 Advertising—Selected past recommendations. [Order 11, § 460-24-150, filed 3/3/72. Formerly WAC 308-132-280.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-160 Advertising—Refunds. [Order 11, § 460-24-160, filed 3/3/72. Formerly WAC 308-132-290.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-200 Records required of investment advisers. [Order 11, § 460-24-200, filed 3/3/72. Formerly WAC 308-132-300.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-210 Compensation. [Order 11, § 460-24-210, filed 3/3/72. Formerly WAC 308-132-310.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-220 Authority of investment adviser. [Order 11, § 460-24-220, filed 3/3/72. Formerly WAC 308-132-340.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.
- 460-24-300 Inequitable and fraudulent practices. [Order 11, § 460-24-300, filed 3/3/72. Formerly WAC 308-132-320.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-24A WAC.

**Chapter 460-28**  
**ADVERTISING**

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

**Chapter 460-32**  
**RULES FOR LIMITED PARTNERSHIPS**

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

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

#### Chapter 460-36

##### RULES FOR REAL ESTATE INVESTMENT TRUSTS

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

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

- 460-36-130 Leverage. [Order 10, § 460-36-130, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-140 Minimum capital. [Order 10, § 460-36-140, filed 11/12/71. Formerly WAC 308-132-146.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-150 Other limitations. [Order 10, § 460-36-150, filed 11/12/71. Formerly WAC 308-132-158.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-160 Advisory contract. [Order 10, § 460-36-160, filed 11/12/71. Formerly WAC 308-132-150.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-170 Reports and meetings. [Order 10, § 460-36-170, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.
- 460-36-180 Application to prior filings. [Order 10, § 460-36-180, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-36A WAC.

#### Chapter 460-48A

##### RESTRICTED REAL ESTATE SECURITIES

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

#### Chapter 460-60

##### RULES FOR FILING OF ANNUAL FINANCIAL REPORTS FOR INTRASTATE OFFERINGS

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

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

- 460-60-530 Schedule VII. Intangible assets. [Order 10, § 460-60-530, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-535 Schedule VIII. Reserves for depreciation and amortization of intangible assets. [Order 10, § 460-60-535, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-540 Schedule IX. Bonds, mortgages, and similar debt. [Order 10, § 460-60-540, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-545 Schedule X. Indebtedness to affiliates—Not current. [Order 10, § 460-60-545, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-550 Schedule XI. Guarantees of securities of other issuers. [Order 10, § 460-60-550, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-555 Schedule XII. Reserves. [Order 10, § 460-60-555, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-560 Schedule XIII. Capital shares. [Order 10, § 460-60-560, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-565 Schedule XIV. Warrants or rights. [Order 10, § 460-60-565, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-570 Schedule XV. Other securities. [Order 10, § 460-60-570, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-575 Schedule XVI. Supplementary income or loss information. [Order 10, § 460-60-575, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- 460-60-580 Schedule XVII. Income from dividends. [Order 10, § 460-60-580, filed 11/12/71.] Repealed by Order 304, filed 2/28/75, effective 4/1/75. See chapter 460-60A WAC.
- Chapter 460-90**  
**CAMPING CLUBS**
- 460-90-100 Camping club registration applications. [Order 12, § 460-90-100, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-010.
- 460-90-110 Camping club registration exhibits. [Order 453-DOL, § 460-90-110, filed 10/5/77; Order 12, § 460-90-110, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-020.
- 460-90-120 Signing of application. [Order 12, § 460-90-120, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-030.
- 460-90-122 Consent to service process. [Order 12, § 460-90-122, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-125 Availability of campsites. [Order 12, § 460-90-125, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-130 Membership contract. [Order 453-DOL, § 460-90-130, filed 10/5/77; Order 12, § 460-90-130, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-140 Financial statements. [Order 453-DOL, § 460-90-140, filed 10/5/77; Order 12, § 460-90-140, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-040.
- 460-90-150 Management fees. [Order 12, § 460-90-150, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-160 Certificates of local authorities. [Order 12, § 460-90-160, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-170 Change of development plans. [Order 12, § 460-90-170, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-180 Amendments. [Order 12, § 460-90-180, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-190 Approval not endorsement. [Order 12, § 460-90-190, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-050.
- 460-90-200 Notice of termination of sale. [Order 12, § 460-90-200, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-060.
- 460-90-300 Receipt of offering circular. [Order 453-DOL, § 460-90-300, filed 10/5/77; Order 12, § 460-90-300, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-310 Offering circular. [Order 453-DOL, § 460-90-310, filed 10/5/77; Order 12, § 460-90-310, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-320 Required information in offering circular. [Order 12, § 460-90-320, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-330 Sequence of presentation. [Order 453-DOL, § 460-90-330, filed 10/5/77; Order 12, § 460-90-330, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-400 Imposition of impound. [Order 12, § 460-90-400, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-410 Special impound. [Order 12, § 460-90-410, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-420 Presumption of impound. [Order 12, § 460-90-420, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-430 Depository. [Order 12, § 460-90-430, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-080.
- 460-90-440 Purchase receipts. [Order 12, § 460-90-440, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-450 Operation of impound condition. [Order 12, § 460-90-450, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.

- Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-090.
- 460-90-460 Release of a portion of the impound. [Order 12, § 460-90-460, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-470 Cost of selling. [Order 12, § 460-90-470, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90-480 Release of impounds. [Order 12, § 460-90-480, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-100.
- 460-90-490 Fee for impound. [Order 12, § 460-90-490, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-105.
- 460-90-500 Advertising. [Order 12, § 460-90-500, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-140.
- 460-90-510 Renewals. [Order 453-DOL, § 460-90-510, filed 10/5/77.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530. Later promulgation, see WAC 460-90A-110.
- 460-90-900 Application form. [Order 12, § 460-90-900, filed 4/25/72.] Repealed by 83-06-076 (Order SDO-40-83), filed 3/2/83. Statutory Authority: RCW 19.105.530.
- 460-90A-020 Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-040.
- Camping club contract registration exhibits. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-020, filed 3/2/83. Formerly WAC 460-90-110.] Repealed by 85-12-021 (Order RE 131), filed 5/29/85. Statutory Authority: RCW 19.105.530.
- 460-90A-022 Exemptions from registration—Noncommercial resale contract offerings. [Statutory Authority: RCW 19.105.530. 85-12-021 (Order RE 131), § 460-90A-022, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-050.
- 460-90A-025 Statement of record—Filings and information required upon application for registration of start-up camp resort projects and contract offerings. [Statutory Authority: RCW 19.105.530, 19.105.320 and 19.105.380. 85-12-021 (Order RE 131), § 460-90A-025, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-060.
- 460-90A-027 The public offering statement—Form, content, and preparation. [Statutory Authority: RCW 19.105.530 and 19.105.320 (1)(b). 85-12-021 (Order RE 131), § 460-90A-027, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-070.
- 460-90A-030 Signing of application and the permit. [Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-030, filed 9/18/85; 85-12-021 (Order RE 131), § 460-90A-030, filed 5/29/85. Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-030, filed 3/2/83. Formerly WAC 460-90-120.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-070.

## Chapter 460-90A

## CAMPING CLUBS—CONTRACTS—RESALE, ETC.

- 460-90A-005 Organization. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-005, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-12-021 (Order RE 131), § 460-90A-005, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-010.
- 460-90A-010 Camping club contract registration application. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-010, filed 3/2/83. Formerly WAC 460-90-100.] Repealed by 85-12-021 (Order RE 131), filed 5/29/85. Statutory Authority: RCW 19.105.530.
- 460-90A-015 Definitions. [Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-015, filed 9/18/85; 85-12-021 (Order RE 131), § 460-90A-015, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-020.
- 460-90A-017 Reporting events that shall require that the operator keep written disclosures current. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-017, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-017, filed 9/18/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-030.
- 460-90A-018 Material events that are amendments requiring notice and a filing fee. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-018, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-018, filed 9/18/85; 85-12-021 (Order RE 131), § 460-90A-018, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-040.
- 460-90A-032 The public offering statement—Delivery to prospective purchasers. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-032, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-032, filed 9/18/85. Statutory Authority: RCW 19.105.530 and 19.105.370. 85-12-021 (Order RE 131), § 460-90A-032, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-090.
- 460-90A-035 Purchaser cancellations of contracts—Prompt refund of funds and consideration. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-035, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-035, filed 9/18/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-100.
- 460-90A-040 Financial statements. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-040, filed 3/2/83. Formerly WAC 460-90-140.] Repealed by 85-12-021 (Order RE 131), filed 5/29/85. Statutory Authority: RCW 19.105.530.
- 460-90A-045 Financial statements and information. [Statutory Authority: RCW 19.105.530 and 19.105.320 (1)(a). 85-19-093 (Order 133 R), § 460-90A-045, filed 9/18/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-110.
- 460-90A-050 Registration not endorsement. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-050, filed 3/2/83. Formerly WAC

- 460-90-190.] Repealed by 85-19-093 (Order 133R), filed 9/18/85.
- 460-90A-055 Written disclaimer of endorsement. [Statutory Authority: RCW 19.105.530 and 19.105.320(1). 85-19-093 (Order 133 R), § 460-90A-055, filed 9/18/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-120.
- 460-90A-060 Notice of termination of sales. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-060, filed 3/2/83. Formerly WAC 460-90-200.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-130.
- 460-90A-070 Receipt of written disclosures. [Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-070, filed 9/18/85. Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-070, filed 3/2/83.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-140.
- 460-90A-080 Depository. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-080, filed 3/2/83. Formerly WAC 460-90-430.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-150.
- 460-90A-090 Operation of impound condition. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-090, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-090, filed 9/18/85. Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-090, filed 3/2/83. Formerly WAC 460-90-450.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-160.
- 460-90A-100 Release of impounds. [Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-100, filed 9/18/85. Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-100, filed 3/2/83. Formerly WAC 460-90-480.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-170.
- 460-90A-105 Fee for impound. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-105, filed 3/2/83. Formerly WAC 460-90-490.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-180.
- 460-90A-110 Renewals. [Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-110, filed 3/2/83. Formerly WAC 460-90-510.] Repealed by 85-12-021 (Order RE 131), filed 5/29/85. Statutory Authority: RCW 19.105.530.
- 460-90A-115 Renewals. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-115, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530. 85-19-093 (Order 133 R), § 460-90A-115, filed 9/18/85; 85-12-021 (Order RE 131), § 460-90A-115, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-190.
- 460-90A-120 Salesperson registration. [Statutory Authority: RCW 19.105.440(3). 83-06-076 (Order SDO-40-83), § 460-90A-120, filed 3/2/83.] Repealed by 85-12-021 (Order RE 131), filed 5/29/85. Statutory Authority: RCW 19.105.530.
- 460-90A-122 Salesperson registrations. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-122, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.530 and 19.105.440(3). 85-12-021 (Order RE 131), § 460-90A-122, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-200.
- 460-90A-125 Salesperson registration—For persons in the business of offering resale contracts. [Statutory Authority: RCW 19.105.530 and 19.105.440(3). 85-12-021 (Order RE 131), § 460-90A-125, filed 5/29/85.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130.
- 460-90A-130 Request for withdrawal of camping club property. [Statutory Authority: RCW 19.105.530. 83-06-076 (Order SDO-40-83), § 460-90A-130, filed 3/2/83.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-210.
- 460-90A-140 Advertisements. [Statutory Authority: RCW 19.105.530 and 19.105.360. 85-12-021 (Order RE 131), § 460-90A-140, filed 5/29/85. Statutory Authority: RCW 19.105.320(1). 83-06-076 (Order SDO-40-83), § 460-90A-140, filed 3/2/83. Formerly WAC 460-90-500.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-220.
- 460-90A-145 Fees and charges. [Statutory Authority: RCW 43.24.086. 90-06-051, § 460-90A-145, filed 3/2/90, effective 4/2/90. Statutory Authority: RCW 19.105.411. 89-01-082 (Order PM 807), § 460-90A-145, filed 12/20/88.] Repealed by 91-01-082, filed 12/17/90, effective 1/17/91. Statutory Authority: RCW 19.105.130. Later promulgation, see WAC 308-420-240.
- 460-90A-150 Resale by salesperson for commission of camping club contracts exempt from registration. [Statutory Authority: RCW 19.105.440(3). 83-06-076 (Order SDO-40-83), § 460-90A-150, filed 3/2/83.] Repealed by 85-12-021 (Order RE 131), filed 5/29/85. Statutory Authority: RCW 19.105.530.

## Chapter 460-10A WAC

## DEFINITIONS

## WAC

- 460-10A-001 Effect of adoption of rules.
- 460-10A-00101 Definitions.
- 460-10A-010 Administrator.
- 460-10A-015 Division.
- 460-10A-020 Charter documents.
- 460-10A-025 Code.
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- 460-10A-035 Seasoned corporation.
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- 460-10A-055 Acquisition fee.
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- 460-10A-075 Capital contribution.
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- 460-10A-095 Construction fee.
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- 460-10A-115 Nonspecified property program.
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 460-10A-175 Director.  
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**DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

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

**WAC 460-10A-001 Effect of adoption of rules.** Those registration statements received prior to the effective date of these rules and regulations, concerning the form and content of that statement, will be governed by the rules and regulations in existence at the time of the filing of the registration statement with the securities division.

[Order 304, § 460-10A-001, filed 2/28/75, effective 4/1/75. Formerly chapter 460-10 WAC.]

**WAC 460-10A-00101 Definitions.** The terms used in these rules shall have the meanings set forth in the statutes pursuant to which these rules are adopted, if defined therein, or the meanings expressed in the definitions contained in these rules.

[Order 304, § 460-10A-000 (codified as WAC 460-10A-00101), filed 2/28/75, effective 4/1/75. Formerly chapter 460-10 WAC.]

**WAC 460-10A-010 Administrator.** Means the administrator of the Washington Securities Act appointed pursuant to RCW 21.20.460.

[Order 304, § 460-10A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-10 WAC.]

**WAC 460-10A-015 Division.** Means the securities division of the department of licensing.

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

**WAC 460-10A-020 Charter documents.** Means certificate of incorporation, articles of incorporation, agreement of consolidation or merger, and bylaws of a corporation; declaration of trust; agreement of partnership, certificate of limited partnership, or any other document or instrument adopted to establish or regulate any association, joint stock company, trust, or other entity; as such documents are currently in effect.

[Order 304, § 460-10A-020, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-025 Code.** Means the Washington Securities Act. Chapter 21.20 RCW et seq.

[Order 304, § 460-10A-025, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-030 Default or arrears.** Means default or arrears in payment of dividends, interest, sinking fund payment, or principal, on the date due.

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[Order 304, § 460-10A-030, filed 2/28/75, effective 4/1/75.]

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

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

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

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

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

(3) Issued to a promoter in the recent past or proposed to be issued at a price substantially lower than the price at which other securities of the same class or substantially similar class have been or are to be sold without any change in the conditions of the market or in the circumstances of the issuer which would justify such different prices.

[Order 304, § 460-10A-050, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-055 Acquisition fee.** The total of all fees and commissions paid by any party in connection with the purchase, construction, or development of property by a program. Included in the computation of such fees or commissions shall be any real estate commission, acquisition fee, selection fee, development fee, construction fee, nonrecurring management fee, or any fee of a similar nature, however designated.

[Order 304, § 460-10A-055, filed 2/28/75, effective 4/1/75.]

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

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

(3) Any officer, director, partner or employee, or such person, and if such other person is an officer, director, partner or employee, any company for which such person acts in any such capacity.

[Order 304, § 460-10A-060, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-065 Appraised value.** Value according to an appraisal prepared according to the standards of the American Institute of Real Estate Appraisers by a competent, independent appraiser who is a member of the Appraisal Institute, or designated member of the Society of Real Estate Appraisers, or approved for such appraisal problem by the Washington state department of highways.

[Order 304, § 460-10A-065, filed 2/28/75, effective 4/1/75.]



**WAC 460-10A-070 Assessments.** Additional amounts of capital which may be mandatorily required of or paid at the option of a participant beyond his subscription commitment.

[Order 304, § 460-10A-070, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-075 Capital contribution.** The gross amount of investment in a program by a participant, or all participants as the case may be.

[Order 304, § 460-10A-075, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-080 Cash flow.** Program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payment, capital improvements and replacements.

[Order 304, § 460-10A-080, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-090 Cash available for distribution.** Cash available for distribution means cash flow less amount set aside for restoration or creation of reserves.

[Order 304, § 460-10A-090, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-095 Construction fee.** A fee for acting as general contractor to construct improvements on a program's property either initially or at a later date.

[Order 304, § 460-10A-095, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-100 Cost of property.** The sum of the price paid by the buyer for property plus all costs, payments, and expenses and cost of improvements, if any, reasonably and properly allocable to the property in accordance with generally accepted accounting principles (cost may include acquisition fees, loan "points," and debts).

[Order 304, § 460-10A-100, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-105 Development fee.** A fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

[Order 304, § 460-10A-105, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-110 Net worth.** The excess of total assets over total liabilities as determined by generally accepted accounting practices.

[Order 304, § 460-10A-110, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-115 Nonspecified property program.** A program where, at the time a securities registration is ordered effective, less than seventy-five percent of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties.

[Order 304, § 460-10A-115, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-120 Organization and offering expenses.** Those expenses incurred in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the program.

[Order 304, § 460-10A-120, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-125 Participant.** The holder of a program interest.

[Order 304, § 460-10A-125, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-130 Person.** Any natural person, partnership, corporation, association or other legal entity.

[Order 304, § 460-10A-130, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-135 Program.** A limited or general partnership, joint venture, unincorporated association or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of, or gain from an interest in real property.

[Order 304, § 460-10A-135, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-140 Program interest.** The limited partnership unit or other indicia of ownership in a program.

[Order 304, § 460-10A-140, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-145 Program management fee.** A fee paid to the sponsor or other persons for management and administration of the program.

[Order 304, § 460-10A-145, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-150 Property management fee.** The fee paid for day-to-day professional property management services in connection with a program's real property projects.

[Order 304, § 460-10A-150, filed 2/28/75, effective 4/1/75.]

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

[Order 304, § 460-10A-155, filed 2/28/75, effective 4/1/75.]

**WAC 460-10A-160 Recognized securities manual.** For the purpose of RCW 21.20.320(2) "Recognized securities manual" shall mean: *Fitch Investors Service*,

*Moodys Investors Service* (except for *Moodys International Manual*), and *Standard and Poor's Corporation Records*; provided that the outstanding securities of issuers meet the following requirements:

(1) An entry describing the issuer and meeting the informational requirements of RCW 21.20.320(2) was published in *Moodys Investors Service OTC-Industrial Manual* and such an entry has appeared continuously in that manual since August 9, 1986 and the issuer has not subsequently reorganized, merged, consolidated, or had a stock split; or

(2) An entry describing the issuer and meeting the informational requirements of RCW 21.20.320(2) was published in *Fitch Investors Service*, *Standard and Poor's Corporation Records* or *Moody's Investor Services* (other than the *OTC-Industrial Manual* and *Moody's International Manual*) and such an entry has appeared continuously in that manual since September 30, 1989, and the issuer has not subsequently reorganized, merged, consolidated, or had a stock split; or

(3) Securities of the issuer have been registered with the Securities and Exchange Commission pursuant to section 12 of the Securities and Exchange Act of 1934, and the issuer has been subject to the reporting requirements of section 13 of that act, and has promptly filed all reports required by section 13 for the three reporting periods immediately preceding the claim of the RCW 21.20.320(2) transactional exemption; or

(4) The issuer is a unit investment trust registered under section 8 of the Investment Company Act of 1940 and securities involved were initially registered under RCW 21.20.140; or

(5)(a) The security is of a class which has been outstanding in the hands of the public for at least ninety days; (b) the issuer of the security is a going concern actually engaged in business and not in the developmental stage or in bankruptcy or receivership; and (c) the issuer of the security, including any predecessors, has been in continuous operation for at least five years.

[Statutory Authority: RCW 21.20.450 and 21.20.320(2), 89-21-032 (Order SDO-161-89), § 460-10A-160, filed 10/11/89, effective 11/11/89; 86-15-023 (Order SDO-89-86), § 460-10A-160, filed 7/14/86; Order 342, § 460-10A-160, filed 9/29/75.]

**WAC 460-10A-170 Officer.** The term "officer" means a president, treasurer or secretary, or any person occupying a similar status and performing a similar function with respect to any organization, whether incorporated or unincorporated.

[Order SD-131-77, § 460-10A-170, filed 11/23/77.]

**WAC 460-10A-175 Director.** The term "director" means any director of a corporation or any person occupying a similar status and performing a similar function with respect to any organization, whether incorporated or unincorporated.

[Order SD-131-77, § 460-10A-175, filed 11/23/77.]

**WAC 460-10A-180 Promoter.** The term "promoter" includes, but is not limited to: (1) Any person

who, acting alone or in conjunction with one or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or (2) any person who, in connection with the founding or organizing of the business or enterprise of the issuer, directly or indirectly receives in consideration of services or property, ten percent or more of any class of securities or of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds, either solely as underwriting commissions or solely in consideration of property, shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

[Order SD-131-77, § 460-10A-180, filed 11/23/77.]

## Chapter 460-16A WAC

### GENERAL RULES

#### WAC

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460-16A-150	Imposition of impound condition.
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460-16A-165	Depository.
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460-16A-185	Technical reports prepared by state employee.
460-16A-190	Petition for repeal or adoption of new rules.
460-16A-390	Notice of termination of offering—Change of officers.

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

(2) Where the individual characteristics of specific offerings warrant modification from these standards, they will be accommodated, insofar as possible, while still being consistent with the spirit of these rules.

[Order 304, § 460-16A-005, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-010 Appearance and practice before the securities division.** In any proceeding before the division, any person may be represented by an attorney at law admitted to practice before the highest court of any state or territory of the United States, or the Court of Appeals or the District Court of the United States, or for the District of Columbia. Any individual may, however, appear before the division in his own behalf, an authorized member of a partnership may represent the partnership, and an authorized officer of a corporation, trust or association may represent such corporation, trust or association, however no such officer may participate in contested cases as defined in RCW 34.04.010 unless such officer is also an attorney at law.

[Order 304, § 460-16A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-015 Telephone transceiving equipment.** Messages directed to the division by means of Xerox Telecopier, Magnafax, or other compatible telephone

transceiving equipment will be accepted by the administrator as complying with the requirement of notification under RCW 21.20.190 of the Securities Act concerning the date and time unless a federal registration statement has become effective and with respect to the content of the price amendment, if any. Such notification must be followed up by filing of a post-effective amendment to the application containing the information and documents in the price amendment and telephone transceiving equipment may not be utilized for that filing.

[Order 304, § 460-16A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-020 Interpretive opinions.** Each request for a written interpretive opinion of the administrator shall be made in writing and shall fully set forth the question presented and the particular facts and circumstances upon which the opinion is requested. Each interpretive opinion is applicable only to the transaction identified in the request therefor, and may not be relied upon in connection with any other transaction, and are discretionary with the division.

[Order 304, § 460-16A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-025 Applications and reports.** Each application or report filed with the administrator must be in the form, if any, prescribed by these rules, unless the administrator consents to the use of a different form. Only the original of any application or report need be submitted, unless otherwise provided in these rules or otherwise requested by the administrator.

[Order 304, § 460-16A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

- (1) The name of the applicant;
- (2) The provision of chapter 21.20 RCW which the application was filed and the date of filing the application;
- (3) The total amount paid and how paid (check, cash);
- (4) The amount of the refund claimed as due and the grounds upon which the claim is made.

[Order 304, § 460-16A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-035 Voting rights of common stock.** Common shares and similar equity securities should normally carry equal voting rights on all matters where such vote is permitted by applicable law.

[Order 304, § 460-16A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-040 Voting rights of preferred stocks.** The charter documents of a corporation proposing to issue preferred shares (which are nonparticipating and nonconvertible) without full voting rights should normally provide that the holders of such preferred shares shall have the right to reasonable representation on the board of directors upon a cumulative default, whether consecutive or not, of dividend payments for two years and that such shall continue until the full payment of all arrears in dividends on such preferred shares. The right to elect a majority of the board is presumptively reasonable.

[Order 304, § 460-16A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

- (1) A provision that the dividends on such shares shall be cumulative;
- (2) A provision prohibiting any dividends on common stock during the existence of any arrears on the preferred shares;
- (3) An appropriate requirement for the approval by the vote or written consent of a specified percentage of the preferred shares of any substantial sale of assets or any adverse change in the rights of such shares and of the issuance of any shares having priority over such preferred shares; and
- (4) Appropriate dividend restrictions on the common stock.

[Order 304, § 460-16A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

- (1) The legality of form and status of existence of the registrant;
- (2) Status of litigation in which the registrant is involved or of which the attorney has actual notice that may be pending 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-055 Corporate resolution.** There shall be submitted a copy of the corporate resolution authorizing the registrant's filing the registration statement and authorizing the issue.

[Order 304, § 460-16A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-065 Convertible senior securities.** The charter documents of a corporation proposing to issue convertible preferred shares or the indenture or other

instrument pursuant to which convertible debt securities or options or warrants are proposed to be issued should normally contain an appropriate antidilution provision providing for an adjustment of the number of shares into which such shares or units are convertible or the number of shares purchasable pursuant to such options or warrants upon any stock split or stock dividend or other recapitalization of the issuer. Such charter documents or indenture or other instrument may also provide for a similar adjustment upon the issuance of additional common stock by the issuer for a consideration less than the conversion price of the options or warrants for less than the then current market price for the common stock.

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

**WAC 460-16A-070 Assessments.** Securities should be nonassessable, except that issuers organized solely to supply services or property to their members on a continuing basis may provide for an equitable assessment corresponding to the services or property supplied.

[Order 304, § 460-16A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

Stock acquired or to be acquired by the underwriter, a person associated with an underwriter, underwriters' counsel, finder, financial adviser, or related parties in connection with the offering is considered part of the underwriters' compensation and is valued for such purposes on a formula basis taking into account the difference between the cost of such stock and the public offering price and other factors. However, the fact that stock has been held, or that there is an obligation to hold it, for a substantial period of time, and the method of payment therefore, may alter the valuation placed thereon.

[Order 304, § 460-16A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-080 Subscription agreement.** The subscription agreement shall contain among other things an acknowledgment by the subscriber that he has received a copy of the offering circular. Each completed subscription agreement shall be kept in the office of the issuer or broker-dealer for a period of three years after the transaction.

[Order 304, § 460-16A-080, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-085 Options to underwriters.** Options granted by the issuer to underwriters or other persons as compensation, in whole or in part, for the sale of securities must be reasonable in amount and in terms and conditions under the circumstances of the particular issue. Options which meet the following requirements are presumptively reasonable:

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

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

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

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

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

(6) Either the exercise of the options, or the resale, transfer and assignment of the shares underlying the options, is prohibited for a period of at least one year from the date of the offering.

[Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-16A-085, filed 3/19/80; Order 304, § 460-16A-085, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-090 Pro rata options to shareholders.** Options may be issued to all of the shareholders of an issuer (or all of the holders of a particular class of stock) to purchase additional shares on a pro rata basis and having a term of not more than 90 days following their issuance, provided the exercise price is not so low in relation to the market price, or the underlying value of the shares where no market exists, as to be unreasonably prejudicial to those shareholders unable to exercise or sell their options and provided that the relative equity positions of different classes of outstanding shares will

not be unfairly prejudiced thereby. An exercise price which is not more than 15 percent below the preexisting market price is presumptively reasonable under this section. Such options to shareholders should normally be freely transferable.

[Order 304, § 460-16A-090, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-095 Options to purchasers of debt securities.** Options may be issued to the purchasers of debt securities from the issuer provided the terms of such options are reasonable and their issuance is reasonably necessary in order to obtain the debt financing. If the term of such options does not exceed the maximum life of the debt securities or 15 years, whichever is less, the number of shares of equity securities issuable upon exercise of shares that could be purchased at the exercise price with the face amount of the debt securities and the exercise price is not less than the market price at the date of the grant of such options, the terms and conditions of such options are presumptively reasonable.

[Order 304, § 460-16A-095, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-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

Total paid by promoter	\$100
Public offering price per share x .85 =	\$10 x .85 = 11.77
	Fully Paid Shares

Shares held by promoters	100
Fully paid shares	- 12*
Number of promotional shares (Subject to escrow)	88

\*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-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.]

**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-111 Equity investment of promoters.**

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

(2) For purposes of this policy:

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

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

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

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

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

(d) Upon the application and justification of the registrant, the director or administrator may waive, in whole or in part, the applicability of this rule if it is found in the public interest to grant such relief.

[Order SD-131-77, § 460-16A-111, filed 11/23/77.]

**WAC 460-16A-115 Reimbursement of expenses incurred by promoters.** Actual and necessary expenses incurred by a promoter in connection with the founding or organizing of a business enterprise, the offering of its securities and the acquisition of assets with which the issuer is to carry on its business may be reimbursed out of the proceeds of the sale of securities, subject, however, in the case of selling expenses to the limitation on total selling expenses contained in WAC 460-16A-075 of these rules.

[Order 304, § 460-16A-115, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

[Order 304, § 460-16A-120, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

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

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

(3) Every offering circular or prospectus must disclose all material facts affecting the sale of securities. Contents of prospectus for real estate programs are set out



in WAC 460-32A-195 and should be used for other types of securities where appropriate.

[Order 304, § 460-16A-125, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-126 Annual revision of offering circular.** The prospectus or offering circular shall be amended whenever there 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-127 Offering registered with the Securities and Exchange Commission ("SEC").** With respect to offerings registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, and qualified with the administrator by coordination, a prospectus which is part of a registration statement which has been declared effective by the SEC shall be deemed to comply with all requirements as to form of this rule: *Provided, however,* That the administrator reserves the right to require additional disclosure of substance in his discretion.

[Order 304, § 460-16A-127, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

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

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

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

(b) That it is inadvisable for the issuer to expend the proceeds from the sale of securities prior to receipt of an amount necessary to evidence compliance with the maximum amount of allowances for promotional shares and/or cheap stock as set forth in WAC 460-16A-105 and 460-16A-107.

[Order SD-131-77, § 460-16A-150, filed 11/23/77; Order 304, § 460-16A-150, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

(1990 Ed.)

One hundred percent of any amounts received from the sale of securities, including any amounts to be allowed as selling expenses, shall within 48 hours of the receipt be placed with the depository until the administrator takes further action.

[Order 304, § 460-16A-155, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-156 Source of impound deposits.** All funds deposited into the impound account shall be derived solely from the sale of the securities for which the impound condition has been imposed.

[Statutory Authority: RCW 21.20.250. 79-09-028 (Order SD-57-79), § 460-16A-156, filed 8/14/79.]

**WAC 460-16A-160 Subscription agreements and purchase receipts.** When an impound condition is imposed, the issuer shall deliver to each subscriber a subscription agreement, in a form approved by the administrator. Such subscription agreements shall be consecutively numbered and prepared in quadruplicate and the original given to the subscriber, the first copy to the depository together with the payment received, the second copy to the issuer, and the third copy shall be retained by the broker, if any. In addition, if the securities are to be paid for in installments, each subscriber shall be given a receipt, in a form satisfactory to the administrator, for each installment payment made subsequent to the first payment.

[Order 304, § 460-16A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-165 Depository.** Funds subject to an impound condition shall be placed in a separate trust account with a bank located in Washington or a Washington bank, savings and loan or trust company, or (if the issuer is a corporation located in another state) a foreign bank, savings and loan or trust company approved by the administrator. A written consent of the depository to act in such capacity shall be filed with the division, on a form satisfactory to the administrator.

[Order 304, § 460-16A-165, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

(1) A statement of the issuer that all required proceeds from the sale of securities have been placed with

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the depository in accordance with the terms and conditions of the impound condition and that there have been no material adverse changes in the financial condition of the issuer and any changes in the plan of operation or in other circumstances that would render the amount of the impounds inadequate to finance the proposed plan of operation.

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

(3) Such other information as the administrator may require in a particular case.

[Statutory Authority: RCW 21.20.450, 79-09-028 (Order SD-57-79), § 460-16A-170, filed 8/14/79; Order 304, § 460-16A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-175 Failure to comply with impound condition.** If the specified amount of impounds has not been obtained as of the date specified in the impound condition, or upon the earlier issuance of a stop order or order suspending or revoking the permit, the administrator will issue an order directing the depository to return directly to each subscriber the amount of impounds which correspond to his payments; except that in unusual cases an extension of time may be granted upon application.

[Order 304, § 460-16A-175, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

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

(2) The engineer, appraiser or other skilled person preparing a technical report shall submit with such report a statement as to his qualifications and experience and a statement of any material relationship or other factors which tends to impair his independence from the subject matter to which or the person to whom the technical report relates.

[Order 304, § 460-16A-180, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-185 Technical reports prepared by state employee.** When a technical report is to be prepared by an employee of the state of Washington, the administrator shall estimate the expense of making such report and notify the applicant thereof. Before any preparation of the technical report is commenced, the applicant shall deposit with the administrator the estimate cost thereof in cash, accompanied by written instructions authorizing the disbursement of the funds. If it appears that the expense of preparing the report will

exceed the estimate, an additional deposit may be required before the report is filed. When the deposit exceeds the actual expense incurred in preparing the report, the excess will be returned to the applicant.

[Order 304, § 460-16A-185, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-190 Petition for repeal or adoption of new rules.** Any interested persons may petition the administrator in writing, requesting the promulgation, amendment or repeal of any rule under the Washington Securities Act. Such petition may be in the form of a letter addressed to the administrator and shall set forth the proposed change, including the exact language of any proposed rule or amendment, and the reasons why such change is considered desirable. The administrator shall consider the petition and shall reach a determination within a reasonable time, which he shall communicate to the petitioner.

[Order 304, § 460-16A-190, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

**WAC 460-16A-390 Notice of termination of offering—Change of officers.** An issuer who has completed or discontinued the sale of securities registered with the department of motor vehicles shall notify the administrator in writing to that effect. Until such notice has been given, notices of all withdrawals or changes of officers, directors, trustees, partners or other principal members of registrants shall be made to the administrator of securities as soon as possible, but within five days, after such withdrawals or changes in the personnel of such organization shall become effective.

[Order 304, § 460-16A-390, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

## Chapter 460-17A 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;
- (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-005	Definitions.
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460-20A-010	Churning.
460-20A-015	Confirmation of transactions.
460-20A-020	Disclosure of control of issuer.
460-20A-025	Disclosure of interest in distributions.
460-20A-030	Record of transactions in discretionary accounts.
460-20A-035	Control of the market.
460-20A-045	Transmission or maintenance of payments received in connection with underwritings.
460-20A-050	Disclosure and other requirements when extending or arranging credit in certain transactions.
460-20A-100	Minimum net capital requirement for broker-dealers.
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460-20A-210	Notice of changes by broker-dealers.
460-20A-215	Notice of complaint.
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460-20A-410	Part-time salesman or investment adviser salesman.
460-20A-415	Broker-dealer financial statement.

- 460-20A-420 Dishonest or unethical business practices—Broker-dealers.
- 460-20A-425 Dishonest or unethical business practices—Salespersons.

**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-005 Definitions.** As used in any section of these rules:

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

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

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

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

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

(d) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

[Order 304, § 460-20A-005, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-008 Fraudulent practices of broker-dealers and sales agents.** A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in RCW 21.20.010. This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent.

(1) Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(2) Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any

advertising or sales presentation in a deceptive or misleading manner.

(3) In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would impact on the value of the security.

(4) In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.

(5) Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (a) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (b) parking or withholding securities.

(6) Although nothing in this section precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subsections specifically apply only in connection with the solicitation of a purchase or sale of OTC non-NASDAQ equity securities:

(a) Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation, and the firm's bid and ask price at the time of execution on the confirmation.

(b) Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

(c) In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than five percent of the issued and outstanding shares of that class of securities of the issuer: *Provided*, That this subsection shall apply only if the firm is a market maker at the time of the solicitation.

(d) Conducting sales contests in a particular security.

(e) After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

(f) Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(g) Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

(7) Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

(8) Failure to comply with any prospectus delivery requirement promulgated under federal law.

[Statutory Authority: RCW 21.20.010, 21.20.110 and 21.20.450. 89-17-079 (Order SDO-126-89), § 460-20A-008, filed 8/17/89, effective 9/17/89.]

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

[Order 304, § 460-20A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

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

(2) In any case in which he is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction.

[Order 304, § 460-20A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

[Order 304, § 460-20A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

[Order 304, § 460-20A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

[Order 304, § 460-20A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-035 Control of the market.** The phrase "employ any device, scheme, or artifice," as used in RCW 21.20.010(1), is hereby defined to include any representation made to a customer by a broker-dealer or agent that any security is being offered to such customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated, or by any person controlled by, controlling, or under common control with him. A written notification to a customer at or prior to the completion of the transaction that a broker-dealer making the principal market in a security may be in control of the market, by virtue of the fact that he is the only broker-dealer regularly appearing in the sheets or by reason of the volume of his transactions in relation to the total volume of trading by all broker-dealers, shall be sufficient to negate any representation which might otherwise be implied that he is selling "at the market."

[Order 304, § 460-20A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-045 Transmission or maintenance of payments received in connection with underwritings.** It shall constitute a "device, scheme, or artifice to defraud" as used in RCW 21.20.010(1), for any broker-dealer participating in any distribution of securities, other than

a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

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

(2) If the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

[Order 304, § 460-20A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

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

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

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

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

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

(1990 Ed.)

(2) This rule shall not apply to any credit extended or any loan arranged by any broker-dealer only for the purpose of purchasing or carrying the security offered to be sold in compliance with the requirements of Regulation T, Regulation U or Regulation G (issued by the Board of Governors of the Federal Reserve System).

[Order 304, § 460-20A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-100 Minimum net capital requirement for broker-dealers.** Every licensed broker-dealer shall meet the minimum net capital requirements required by the United State Securities and Exchange Commission as now in effect. Copies of these requirements may be obtained from the securities division.

[Order 304, § 460-20A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-105 Net capital defined.** The definition of "net capital" shall be the same as the definition promulgated by the United State Securities and Exchange Commission as now in effect. Copies of this definition may be obtained from the securities division.

[Order 304, § 460-20A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

(a) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the amount for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

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

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

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

(i) Securities in transfer;

(ii) Dividends and interest received;

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

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

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for his account or for the

account of his customers or partners and showing the location of all securities long and the offsetting positions to all securities short, including long security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

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

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

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

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

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

(h) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such broker-dealer.

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

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

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date pursuant to WAC 460-20-105 and 460-20-110 [See title digest for disposition of chapter 460-20 WAC] of these rules: *Provided, however,* That any exchange member exempted from the requirements of WAC 460-20-100 shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with

the capital rules of at least one of the exchanges of which he is a member. Such trial balances and computations shall be prepared currently at least once a month.

(1) A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

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

(ii) His date of birth.

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

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

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

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

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

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

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

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

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

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



(4) The records specified in subsection (1) of this section shall not be required with respect to any cash transaction of \$100.00 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

[Order 304, § 460-20A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

(1) Every broker-dealer shall preserve for a period of not less than three years, the first two years of which shall be in an easily accessible place:

(a) All records required to be made pursuant to WAC 460-20A-200 of these rules.

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

(c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer, as such.

(d) Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to his business, as such.

(e) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer, as such.

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

(g) All written agreements (or copies thereof) entered into by the broker-dealer relating to his business as such, including agreements with respect to any account.

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

(3) Every broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all charter documents, minute books and stock certificate books.

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

(5) After a record or other document has been preserved for two years, a photograph thereof on film may be substituted therefor for the balance of the required time: *Provided*, That the records required to be maintained and preserved pursuant to WAC 460-20A-200 and 460-20A-205 of these rules, may be immediately produced or reproduced on microfilm and be maintained

and preserved for the required time in that form. If such microfilm substitution for hard copy is made by a member, broker, or dealer, he shall (1) at all times have available for the administrator's examination of his records, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements, (2) arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record, (3) be ready at all times to provide, and immediately provide, any facsimile enlargements which the administrator by his examiners or other representatives may request, and (4) store separately from the original one other copy of the microfilm for the time required.

(6) If a person who has been subject to the requirements of WAC 460-20A-205 of these rules ceases to hold a certificate as a broker-dealer, such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.

[Order 304, § 460-20A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

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

(2) Each licensed broker-dealer shall notify the administrator of the employment of any new agent in Washington and of the termination of employment of any agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment or termination, and the location of the office in which he was or will be employed by submitting a completed NASD Form U-4 to the administrator or the administrator's designee within (21) days after the event occurs.

(3) Each licensed broker-dealer shall notify the administrator of the termination of employment of any agent in Washington by submitting a completed NASD Form U-5 to the administrator or the administrator's designee, within 30 days after the event occurs.

(4) With respect to any broker-dealer registered under the Securities Exchange Act of 1934, it shall be sufficient compliance with subsection (1) of this section if a copy of an amendment to Form BD of the Securities and Exchange Commission containing the required information, or transmitted for filing to, the administrator not later than the date on which such amendment is required to be filed with the Securities and Exchange Commission.

[Statutory Authority: RCW 21.20.450, 85-23-063 (Order SDO-220-85), § 460-20A-210, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-20A-210, filed 8/1/85; Order 304, § 460-20A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-215 Notice of complaint.** Each licensed broker-dealer who has filed a complaint against

any of its partners, officers, directors, agents licensed in Washington with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the administrator, within 10 days following its filing with such other agency or bonding company.

[Order 304, § 460-20A-215, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-220 Salesperson registration and examination.** (1) Every applicant for registration as a securities salesperson, unless exempt as provided herein, shall pass the following examinations with a score of 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 examination.

(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.

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

(h) For a limited salesperson's license to effect or attempt to effect sales of mortgage paper securities as defined in WAC 460-33A-015(5), the individual shall pass the uniform securities agent state law examination.

(2) Any individual out of the business of effecting transactions in securities for less than two years and who has previously passed the required examinations in 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) of this section:

(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) of this section.

(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.

[Statutory Authority: RCW 21.20.070 and 21.20.450. 89-17-077 (Order SDO-123-89), § 460-20A-220, filed 8/17/89, effective 9/17/89. 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-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.

(e) For a limited broker-dealer's license to effect transactions in mortgage paper securities as defined in WAC 460-33A-015(5), one individual, officer, or general partner shall pass 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 and 21.20.450. 89-17-077 (Order SDO-123-89), § 460-20A-230, filed 8/17/89, effective 9/17/89. 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.]

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

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

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

If for any reason the person claiming this exemption should have his Washington real estate license cancelled, suspended or revoked then this exemption will not apply to any further transactions.

[Order 304, § 460-20A-235, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-400 Dual representation and affiliation.** (1) A person is dually registered for the purpose of this section if that person is simultaneously registered with the securities division, department of licensing with:

- (a) More than one broker-dealer;
- (b) More than one issuer;
- (c) One or more broker-dealers and one or more issuers;
- (d) More than one investment adviser;
- (e) One or more broker-dealers and one or more investment advisers; or
- (f) One or more issuers and one or more investment advisers;

as a securities salesperson, investment adviser salesperson, broker-dealer, or investment adviser. A person may be dually registered in this state if all broker-dealers, issuers, or investment advisers employing or engaging such person consent to such dual registration in writing in a form acceptable to the administrator.

(2) The consent for subsection (1) of this section shall contain the following provisions:

(a) The effective date of the dual employment or engagement with the respective broker-dealers, issuers, or investment advisers;

(b) Consent by each broker-dealer, issuer, or investment adviser employing or engaging such person to the

employment or engagement of the person by all other broker-dealers, issuers, or investment advisers; and

(c) An agreement that each broker-dealer, issuer, or investment adviser employing or engaging such person will register the person with the securities division and pay the applicable registration fee.

(3) A separate application for registration or renewal shall be made by each broker-dealer, issuer, or investment adviser desiring to employ or engage the person. An executed copy of the consent required by subsection (1) of this section shall accompany the application. The application shall be filed with the administrator and shall contain such exhibits and information as may be required by the administrator, together with the fees required by RCW 21.20.340.

(4) A broker-dealer or investment adviser who employs or engages a securities salesperson or investment adviser salesperson and who consents to the dual registration of that securities salesperson or investment adviser salesperson shall supervise all securities activities of that salesperson relating to the broker-dealer or investment adviser.

[Statutory Authority: RCW 21.20.450, 90-09-058, § 460-20A-400, filed 4/17/90, effective 5/18/90; 85-23-063 (Order SDO-220-85), § 460-20A-400, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-20A-400, filed 8/1/85; Order 342, § 460-20A-400, filed 9/29/75; Order 304, § 460-20A-400, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-405 Receipt of both securities sales commission and investment adviser fees.** (1) It shall constitute a violation of RCW 21.20.010 and 21.20.020 for any person to receive both a sales commission for the purchase or sale of any security and compensation for rendering investment advice concerning said security; provided, however, receipt of both a sales commission and advisory compensation shall not constitute such violation if either:

(a) Such person provides to each customer receiving advice a disclosure of conflict of interest on a form promulgated by the administrator to be given to the customers at least 48 hours before the customer agrees to have the person render the advice; or

(b) The administrator by rule or order waives the necessity of such disclosure on said form as not being necessary in the public interest for the protection of investors.

(2) The purposes of this provision, the term "person" shall include all "affiliates" of such person as defined in WAC 460-10A-060.

(3) In lieu of giving disclosure 48 hours before the agreement, the customer may be given the disclosure document simultaneous to the signing of the agreement so long as the customer is also given five days to cancel the agreement.

[Statutory Authority: RCW 21.20.450, 85-03-042 (Order SDO-1-85), § 460-20A-405, filed 1/11/85.]

**WAC 460-20A-410 Part-time salesman or investment adviser salesman.** An applicant for registration as securities salesman or investment adviser salesman who does not plan to devote full time to the position shall

submit a letter from his present employer granting permission to engage as a part-time securities salesman or investment adviser salesman.

[Order 342, § 460-20A-410, filed 9/29/75; Order 304, § 460-20A-410, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-415 Broker-dealer financial statement.** The financial statements required to be filed by a broker-dealer pursuant to RCW 21.20.090 must be filed within 90 days of the broker-dealer's fiscal year-end. The financial statement must be prepared in accordance with generally accepted accounting principles but need not be audited.

[Order 304, § 460-20A-415, filed 2/28/75, effective 4/1/75. Formerly chapter 460-20 WAC.]

**WAC 460-20A-420 Dishonest or unethical business practices—Broker-dealers.** The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) 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;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary

prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering.

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer 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) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

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

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) 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 security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded 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; or

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member; or

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

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer.

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited.

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: *Provided*, That this subsection shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.

(24) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(25) Any acts or practices enumerated in WAC 460-20A-008.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

[Statutory Authority: RCW 21.20.010, 21.20.110 and 21.20.450. 89-17-079 (Order SDO-126-89), § 460-20A-420, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.450. 85-02-023 (Order SDO-202-84), § 460-20A-420, filed 12/27/84.]

**WAC 460-20A-425 Dishonest or unethical business practices--Salespersons.** The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) 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;

(10) Executing any transaction in a margin account without securing from the customer a properly executing written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering.

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

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

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

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) 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 security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions of any brochure, flyer, or display by words, pictures, graphs or otherwise.

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer.

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited.

(19) Failing to comply with any applicable provision of the Rules of Fair Practice of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

(20) Any act or practice enumerated in WAC 460-20A-008.

The conduct set forth above is not inclusive. Engaging in other conduct such as a forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

[Statutory Authority: RCW 21.20.010, 21.20.110 and 21.20.450. 89-17-079 (Order SDO-126-89), § 460-20A-425, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.450. 85-02-023 (Order SDO-202-84), § 460-20A-425, filed 12/27/84.]

## Chapter 460-24A WAC INVESTMENT ADVISERS

### WAC

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**WAC 460-24A-010 Investment advisers—Where rules apply.** These rules apply only to that part of the investment advisers' business within the state of Washington.

[Order 304, § 460-24A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

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

[Order 304, § 460-24A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-040 Use of certain terms.** (1) For the purposes of RCW 21.20.040(2), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

- (a) Certified financial planner or its abbreviation, CFP;
- (b) Financial consultant;
- (c) Investment consultant;
- (d) Money manager;
- (e) Investment manager;
- (f) Investment planner; or

(g) Chartered financial consultant or its abbreviation, ChFC.

(2) A licensed insurance agent who is not registered as a securities salesperson and is not required to be so registered, and who indicates in writing in all communications with customers or potential customers and in all advertising that his business is limited to insurance products, does not hold himself out as a financial planner merely because he uses the abbreviation ChFC.

[Statutory Authority: RCW 21.20.450 and 21.20.040(2). 90-13-029, § 460-24A-040, filed 6/12/90, effective 7/13/90.]

**WAC 460-24A-050 Investment adviser and investment adviser salesperson (representative) registration and examinations.** (1) In order for an applicant to become licensed in this state as an investment adviser the individual applicant, an officer of the applicant if the applicant is a corporation, or a general partner of the applicant if the applicant is a partnership, shall:

(a) Pass the uniform investment adviser law examination (series 65); and

(b)(i) Pass the NASD general securities principal examination (series 24); or

(ii) Pass the NASD investment company products/variable contracts principal examination (series 26); or

(iii) Hold one of the following designations:

(A) Chartered investment counselor;

(B) Chartered financial analyst;

(C) Certified financial planner;

(D) Chartered financial consultant;

(E) Accredited personal financial specialist; and

(c) File a completed Form ADV.

(2) If the individual officer who takes the examination on behalf of a corporate applicant or the individual general partner who takes the examination on behalf of a partnership ceases to be an officer or general partner, then the investment adviser must notify the securities division of a substitute officer or general partner who has passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license.

(3) In order to become licensed in this state as an investment adviser salesperson (representative), an applicant shall:

(a) Pass the uniform investment adviser law examination (series 65); and

(b)(i) Pass the NASD general securities representative examination (series 7); or

(ii) Pass the NASD investment company products/variable contracts limited representative qualifications examination (series 6); or

(iii) Hold one of the following designations:

(A) Chartered investment counselor;

(B) Chartered financial analyst;

(C) Certified financial planner;

(D) Chartered financial consultant;

(E) Accredited personal financial specialist; and

(c) File a completed Form U-4.

(4) The administrator may waive the testing requirements in subsection (3) of this section for an investment adviser representative whose activities will be limited to

supervising the firm's investment advisory activities in Washington, provided that the applicant has been employed for five years preceding the filing of the application in a supervisory capacity, or as a portfolio manager, by an investment adviser registered under the Investment Advisers Act of 1940 for at least five years and the investment adviser has been engaged in rendering "investment supervisory services" as defined in section 202 (a)(13) of the Investment Advisers Act of 1940.

(5) Any individual who has been retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients any time during the two years prior to application and who has previously passed the required examination in subsection (1) or (3) of this section or the Washington state investment advisers examination shall not be required to retake the examination(s) to be eligible to be relicensed as an investment adviser salesperson (representative) upon application: *Provided*, That until January 1, 1992, the uniform securities agent state law examination (series 63) may be substituted for the uniform investment adviser law examination (series 65) for the purpose of fulfilling the requirements of subsections (1) and (3) of this section.

[Statutory Authority: RCW 21.20.070 and 21.20.450. 90-05-003, § 460-24A-050, filed 2/9/90, effective 3/12/90; 89-17-077 (Order SDO-123-89), § 460-24A-050, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-24A-050, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-24A-050, filed 8/1/85. Statutory Authority: RCW 21.20.450 and 21.20.040. 83-03-024 (Order SDO-6-83), § 460-24A-050, filed 1/13/83. Statutory Authority: RCW 21.20.450. 82-02-033 (Order SDO-149-81), § 460-24A-050, filed 12/31/81; Order SD-131-77, § 460-24A-050, filed 11/23/77; Order 304, § 460-24A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**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.]

**WAC 460-24A-060 Financial statements required on investment advisers.** Every investment adviser shall file with the director a statement of financial condition in such detail as will disclose generally the nature and amount of assets and liabilities and the net worth of such investment adviser as of a date within ninety days prior to the date on which it is filed. Such reports shall be filed annually with the director not more than ninety days after the end of the investment adviser's fiscal year-end (unless extension of time is granted by the director).

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[Statutory Authority: RCW 21.20.450. 85-16-068 (Order SDO-128-85), § 460-24A-060, filed 8/1/85; Order 304, § 460-24A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

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

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

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

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

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

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

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

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

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

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



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

(c) Any other investment advisory service with regard to security.

[Order 304, § 460-24A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-105 Custody or possession of funds or securities of clients.** It shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for any investment adviser who has custody or possession of any funds or securities in which any client has any beneficial interest to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(1) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in someplace reasonably free from risk of destruction or other loss; and

(2)(a) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds,

(b) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and

(c) The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(3) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

(4) Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period and all debits, credits and transactions in such client's account during such period; and

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent certified public accountant or public accountant at a time which shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that he has made an examination of such funds and securities, and describing the nature and extent of such examination shall be filed with the administrator promptly after each such examination.

[Order 304, § 460-24A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

(1990 Ed.)

**WAC 460-24A-140 Guarantees of success.** No representation or statement, whether direct or by implication, should be made guaranteeing the success of investments made pursuant to recommendations of the advisory service concerned.

[Order 304, § 460-24A-140, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-160 Refunds.** Advisory services should not advertise or represent to subscribers or customers that subscriptions, fees or other payments will be refunded if they are not satisfied unless (1) such undertaking to refund is clear and unequivocal and is concerned not with the merit or success of the service, but with the customer's satisfaction therewith and (2) the investment adviser's financial responsibility is adequate to insure its ability to meet all such refund demands.

[Order 304, § 460-24A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

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

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

[Order 304, § 460-24A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-200 Books and records to be maintained by investment advisers.** (1) Every licensed investment adviser shall make and keep true, accurate and current the following books and records relating to his investment advisory business:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify

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the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(d) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

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

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

(g) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security; *Provided, however,* That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; *And provided,* That if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which the investment adviser is vested with any power of attorney with respect to the funds, securities or transactions of any client.

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

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

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

(2) A record of every transaction in a security in which the investment adviser or any investment adviser salesman (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor any investment adviser salesman of the investment adviser has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser salesman has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

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

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

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

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

(b) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase or sale, and all debits and credits.

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

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

amount of interest of each such client, and the location of each such security.

(4) Every licensed investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(a) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase or sale.

(b) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount of the interest of such client.

(5) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

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

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

(7) A licensed investment adviser, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the administrator in writing of the exact address where such books and records will be maintained during such period.

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

(9) As used in this section, the terms "power of attorney" and "discretionary authority" do not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

[Order 304, § 460-24A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-205 Notice of changes by investment adviser.** (1) Each licensed investment adviser shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein) promptly file an amendment to

such application setting forth the changed information (and in any event within 30 days after the change occurs).

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

(3) Each licensed investment adviser shall notify the administrator of the employment of any new representative in Washington by submitting a completed NASD Form U-4 to the administrator or the administrator's designee, within 10 days after the event occurs.

(4) Each licensed investment adviser shall notify the administrator of the termination of employment of any representative in Washington, by submitting a complete NASD Form U-5 to the administrator or the administrator's designee, within 30 days after the event occurs.

[Statutory Authority: RCW 21.20.450 and 21.20.040(2). 90-13-029, § 460-24A-205, filed 6/12/90, effective 7/13/90. Statutory Authority: RCW 21.20.450, 85-23-063 (Order SDO-220-85), § 460-24A-205, filed 11/19/85; 85-16-068 (Order SDO-128-85), § 460-24A-205, filed 8/1/85; Order 304, § 460-24A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-210 Notice of complaint.** Each licensed investment adviser who has filed a complaint against any of its partners, officers, directors, agents licensed in Washington or associated persons with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the administrator, within 10 days following its filing with such other agency or bonding company.

[Order 304, § 460-24A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-24 WAC.]

**WAC 460-24A-220 Dishonest or unethical business practices--Investment advisers and investment adviser salespersons.** The phrase "dishonest or unethical practices" as used in RCW 21.20.110(7) as applied to investment advisers and investment adviser salespersons is hereby defined to include any of the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary

authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee in relation to fees charged by other investment advisers or investment adviser salespersons for similar services.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services;

(b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees; and

(c) An ownership or interest in any entity in which the investment adviser or investment adviser salesperson is recommending that the client purchase (excluding mutual funds).

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

The conduct set forth above is not inclusive engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

[Statutory Authority: RCW 21.20.450. 85-23-063 (Order SDO-220-85), § 460-24A-220, filed 11/19/85.]

## Chapter 460-28A WAC ADVERTISEMENTS

### WAC

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

**WAC 460-28A-010 Advertisements—Scope of rules.** Any advertisement, display, pamphlet, brochure, letter, articles, or communication published in any newspaper, magazine, or periodical, or script or any recording, radio or television announcement, broadcast, or commercial to be used or circulated in connection with the sale and promotion of a registered offering of securities will be subject to the requirements and restrictions set out in WAC 460-28A-015 and 460-28A-020.

[Order 342, § 460-28A-010, filed 9/29/75; Order 304, § 460-28A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

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

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

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

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

(4) The disseminator of the literature or material shall be responsible for the accuracy and reliability of the literature and material, and its conformance with the code and these rules.

[Order 342, § 460-28A-015, filed 9/29/75; Order 304, § 460-28A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

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

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

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

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

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

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

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

(7) Memoranda, reports, letters and similar distributions which tend, alone or by compilation, to substitute, repeat or detract from disclosure in the registered offering circular.

[Order SD-131-77, § 460-28A-020, filed 11/23/77; Order 304, § 460-28A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

**WAC 460-28A-025 Exceptions from filing requirements.** The following forms and types of advertising are

permitted without the necessity for filing or prior authorization by the administrator, unless specifically prohibited.

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

(a) Name and address of issuer.

(b) Identity or title of security.

(c) Per unit offering price, number of shares and amount of offering.

(d) Brief, general description of business.

(e) Name and address of underwriter, or address where offering circular or prospectus can be obtained.

(f) Date of issuance.

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

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

(4) Factual or informative letters, bulletins or releases, similar to "news letters," relating to issuer's progress or activities, status of the offering or current financial conditions.

[Order 304, § 460-28A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-28 WAC.]

### Chapter 460-31A WAC

#### REAL ESTATE PROGRAMS EXCEEDING FIVE MILLION DOLLARS

##### WAC

460-31A-410	Application.
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460-31A-670	Forecasts for specified property programs.
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460-31A-685	Presentation of forecasts.
460-31A-690	Additional disclosures and limitations.
460-31A-695	Forecasts for unimproved property programs.
460-31A-700	Fiduciary duty.
460-31A-705	Deferred payments.
460-31A-710	Reserves.
460-31A-715	Reinvestment of cash flow and proceeds on disposition of property.
460-31A-720	Financial information required on application.
460-31A-725	Opinions of counsel.
460-31A-730	Provisions of the partnership agreement.

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

(2) The rules of this chapter will be applied by analogy to real estate programs in other forms. While applications not conforming to the rules of this chapter shall be looked upon with disfavor, where good cause is shown, certain rules may be modified or waived by the administrator.

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

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

(5) The term "total offering" in subsection (1) above shall be liberally construed and shall, for the purposes of WAC 460-31A-410(1) only, apply to that amount of securities which is filed with the state securities division under one registration statement.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-410, filed 11/21/83.]

**WAC 460-31A-415 Definitions.** For the purposes of this chapter, the following definitions shall apply.

(1) "Acquisition expenses" means expenses including but not limited to legal fees and expenses, travel and

communications expenses, costs of appraisals, nonrefundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses related to selection and acquisition of properties, whether or not acquired.

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

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

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

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

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

(7) "Cash flow" means program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

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

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

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

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

(12) "Development fee" means a fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

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

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

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

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

(17) "Organization and offering expenses" means those expenses incurred in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the program and all advertising expenses.

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

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

(20) "Program" means a limited or general partnership, joint venture, unincorporated association or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from an interest in real property.

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

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

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

(24) "Prospectus" means the meaning given to that term by Section 2(10) of the Securities Act of 1933, including a preliminary prospectus: *Provided, however*,

That such term as used herein shall also include an offering circular as described in Rule 256 of the general rules and regulations under the Securities Act of 1933 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

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

(26) "Sponsor" means any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, and any affiliate of any such person, but does not include a person whose only relation with the program is as that of an independent property manager, whose only compensation is as such. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate interests.

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

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

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-420, filed 11/21/83.]

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

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-425, filed 11/21/83.]

**WAC 460-31A-430 Reports to administrator.** The sponsor shall submit to the administrator any information required to be filed with the administrator, including, but not limited to, reports and statements required to be distributed to limited partners.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-430, filed 11/21/83.]

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

(2) The program may not incur the cost of that portion of liability insurance which insures the sponsor for any liability as to which the sponsor is prohibited from being indemnified under this section.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-435, filed 11/21/83.]

**WAC 460-31A-440 Suitability standards for the participants.** Given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many real estate programs, the sponsors and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type of program to be offered. Sponsors will be required to set forth in the prospectus the investment objectives of a program, a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed for fairness by the administrator in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, tax implications, balloon payment financing, excessive investments in unimproved land, and uncertain or no cash flow from program property. As a general rule, programs structured to give deductible tax losses of 50 percent or more of the capital contribution of the participant in the year of investment should be sold only to persons in higher income tax brackets considering both state and federal income taxes. Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the investor.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-440, filed 11/21/83.]

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

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

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

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

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

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

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

(4) The participant is able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, unless the administrator approves a lower suitability standard, participants shall have a minimum annual gross income of \$30,000 and a net worth of \$30,000, or in the alternative, a net worth of \$75,000. For purposes of this calculation, the investment price includes cash, notes and other recourse liability; and, additional contributions, whether voluntary or mandatory; and, the cost of assessments or cost of exercising warrants or options. In high risk or principally tax oriented offerings, higher suitability standards may be required. In the case of sales to fiduciary accounts, the suitability standards shall be met by the fiduciary or by the fiduciary account or by a donor who directly or indirectly supplies the funds to purchase the program interests. Net worth shall be determined exclusive of home, home furnishings and automobiles.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-445, filed 11/21/83.]

**WAC 460-31A-450 Maintenance of record of suitability.** The sponsor shall maintain a record of the information obtained to indicate that a participant meets the suitability standards employed in connection with the offer and sale of its interests and a representation of the participant that he is purchasing for his own account or, in lieu of such representation, information indicating that the participants for whose account the purchase is made meet such suitability standards. Such information



may be obtained from the participant through the use of a form which sets forth the prescribed suitability standards in full and which includes a statement to be signed by the participant in which he represents that he meets such suitability standards and is purchasing for his own account. However, where the offering is underwritten or sold by a broker-dealer, the sponsor shall obtain a commitment from the broker-dealer to maintain the same record of information required of the sponsor.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-450, filed 11/21/83.]

**WAC 460-31A-455 Minimum investment of participant.** A minimum initial cash purchase of \$2,500 per investor shall be required. Subsequent transfers of such interests shall be limited to no less than a minimum unit equivalent to an initial minimum purchase, except for transfers by gifts, inheritance, intrafamily transfers, family dissolutions, and transfers to affiliates.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-455, filed 11/21/83.]

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

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

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

(3) The application for qualification or registration and the prospectus must fully disclose and itemize all consideration which may be received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.

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

**WAC 460-31A-465 Organization and offering expenses.** All organization and offering expenses incurred in order to sell program interests shall be reasonable.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-465, filed 11/21/83.]

**WAC 460-31A-470 Investment in properties.** (1) The sponsor shall be required to commit a substantial

portion of the program's capital contributions toward investment in properties. The remaining capital contributions may be used to pay front-end fees. When acquisition fees are paid by the seller of properties, such fees shall not be included in satisfying the required minimum investment in properties. Additionally, in determining the amount committed to investment in properties, such calculation shall not take into account any front-end fees.

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

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

- (a) 80 percent of the capital contributions reduced by .1625 percent for each one percent of indebtedness encumbering program properties; or
- (b) 67 percent of the capital contributions.

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

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

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

- (a) No indebtedness - 80 percent to be committed to investment in properties.
- (b) 50 percent indebtedness -  $50 \times .1625\% = 8.125\%$   
 $80 - 8.125\% = 71.875\%$  to be committed to investment in properties.
- (c) 80 percent indebtedness -  $80 \times .1625\% = 13\%$   
 $80 - 13\% = 67\%$  to be committed to investment in properties.

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

**WAC 460-31A-475 Program management fee.** (1) A general partner of a program owning unimproved land shall be entitled to annual compensation not exceeding 1/4 of one percent of the cost of such unimproved land for operating the program until such time as the land is sold or improvement of the land commences by the limited partnership. In no event shall this fee exceed a cumulative total of two percent of the original cost of the land regardless of the number of years held.

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

(3) Program management fees other than as set forth above shall be prohibited.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-475, filed 11/21/83.]

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

(1) An interest equal to 25 percent of cash to be distributed from the net proceeds remaining from the sale or refinancing of properties after payment to investors of an amount equal to 100 percent of capital contributions, plus an amount equal to six percent of capital contributions per annum cumulative, less the sum of prior distributions to investors from cash available for distribution; or

(2) An interest equal to:

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

(b) Fifteen percent of cash to be distributed from the net proceeds remaining from the sale or refinancing of properties after payment to investors of an amount equal to 100 percent of capital contributions, plus an amount equal to six percent of capital contributions per annum cumulative, less the sum of prior distributions to investors from cash available for distribution.

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

(4) Dissolution and liquidation of the partnership. The distribution of assets upon dissolution and liquidation of the partnership shall conform to the applicable subordination provisions of WAC 460-31A-480 (1) and (2)(b), and appropriate language shall be included in the partnership agreement.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-480, filed 11/21/83.]

**WAC 460-31A-485 Real estate commissions on resale.** The total compensation paid to all persons for the sale of a program property shall be limited to a competitive real estate commission, not to exceed six percent of the contract price for the sale of the property. The sponsor may receive up to one-half of the competitive real estate commission, not to exceed three percent and subordinated to payment to the investors of an amount equal to 100 percent of capital contributions, if he provides a substantial amount of the services in the sales effort. Such commission shall be subordinated as in WAC 460-31A-480(2). If the sponsor participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the sponsor.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-485, filed 11/21/83.]

**WAC 460-31A-490 Property management fee.** Should the sponsor or its affiliates perform property management services permitted under WAC 460-31A-520 and 460-31A-525, the fees paid to the sponsor or its affiliates shall be the lesser of the maximum fees set forth in subsections (1) through (3) below or the fees which are competitive for similar services in the same geographic area. Included in such fees shall be book-keeping services and fees paid to nonrelated persons for property management services.

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

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

(3) In the case of industrial and commercial properties which are leased on a long term (ten or more years) net (or similar) basis, the maximum property management fee from such leases shall be one percent of the gross revenues, except for a one time initial leasing fee of three percent of the gross revenues on each lease payable over the first five full years of the original term of the lease.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-490, filed 11/21/83.]

**WAC 460-31A-495 Insurance services.** The sponsor or his affiliate may provide insurance brokerage services in connection with obtaining insurance on the program's property so long as the cost of providing such service, including cost of the insurance, is not greater than the lowest quote obtained from two unaffiliated insurance agencies and the coverage and terms are likewise comparable. In no event may such services be provided by the sponsor or his affiliate unless they are independently engaged in the business of providing such services to other than affiliates and at least 75 percent of their insurance brokerage service gross revenue is derived from other than affiliates.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-495, filed 11/21/83.]

**WAC 460-31A-500 Sales, leases, loans, and related programs.** (1) A program shall not purchase or lease property in which a sponsor has an interest unless:

(a) The transaction occurs at the formation of the program and is fully disclosed in its prospectus or offering circular, and

(b) The property is sold upon terms fair to the program and at a price not in excess of its appraised value, and

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

(d) The provisions of this subsection notwithstanding, the sponsor may purchase property in its own name (and assume loans in connection therewith) and temporarily hold title thereto for the purpose of facilitating the acquisition of such property or the borrowing of money or obtaining of financing for the program, or completion of construction of the property, or any other purpose related to the business of the program, provided that such property is purchased by the program for a price no greater than the cost of such property to the sponsor, except compensation in accordance with WAC 460-31A-460 through 460-31A-495, and provided there is no difference in interest rates of the loans secured by the property at the time acquired by the sponsor and the time acquired by the program, nor any other benefit arising out of such transaction to the sponsor apart from compensation otherwise permitted by these rules.

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

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

(4) A program shall not acquire property from a program in which the sponsor has an interest.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-500, filed 11/21/83.]

**WAC 460-31A-505 Exchange of limited partnership interests.** The program may not acquire property in exchange for limited partnership interests, except for property which is described in the prospectus or offering circular which will be exchanged immediately upon effectiveness. In addition, such exchange shall meet the following conditions:

(1) A provision for such exchange must be set forth in the partnership agreement, and appropriate disclosure as to tax effects of such exchange are set forth in the prospectus or offering circular;

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

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

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

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

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

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

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

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-505, filed 11/21/83.]

**WAC 460-31A-510 Exclusive agreement.** A program shall not give a sponsor an exclusive right to sell or exclusive employment to sell property for the program.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-510, filed 11/21/83.]

**WAC 460-31A-515 Sales commissions on reinvestment or distribution.** A program shall not pay, directly or indirectly, a commission or fee (except as permitted under WAC 460-31A-460 through 460-31A-490) to a sponsor in connection with the reinvestment or distribution of the proceeds of the resale, exchange, or refinancing of program property.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-515, filed 11/21/83.]

**WAC 460-31A-520 Expenses of the program.** (1) All expenses of the program shall be billed directly to and paid by the program. The sponsor may be reimbursed for the actual cost of goods and materials used for or by the program and obtained from entities unaffiliated with the sponsor. The sponsor may be reimbursed for the administrative services necessary to the prudent operation of the program provided that the reimbursement shall be at the lower of the sponsor's actual cost or the amount the program would be required to pay to independent parties for comparable administrative services in the same geographic location. No reimbursement shall be permitted for services for which the sponsor is entitled to compensation by way of a separate fee. Excluded from the allowable reimbursement (except as permitted under WAC 460-31A-470(1)) shall be:

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

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

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

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

(b) Executive management, such as the

(i) President,

(ii) Vice-president or senior vice-president,

(iii) Corporate secretary,

(iv) Treasurer;

(c) Senior management, such as the vice president of an operating division who reports directly to executive management; or, those holding five percent or more equity interest in the sponsor or a person having the power to direct or cause the direction of the sponsor, whether through the ownership of voting securities, by contract, or otherwise.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-520, filed 11/21/83.]

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

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

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

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

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

The methods of verification shall be in accordance with generally accepted auditing standards and shall accordingly include such tests of the accounting records and such other auditing procedures which the sponsor's independent certified public accountants consider appropriate in the circumstance. The additional costs of such verification will be itemized by said accountants on a program by program basis and may be reimbursed to the sponsor by the program in accordance with this subsection only to the extent that such reimbursement when added to the cost for administrative services rendered does not exceed the competitive rate for such services as determined above.

The prospectus must disclose in tabular form an estimate of such proposed expenses for the next fiscal year together with a breakdown by year of such expenses reimbursed in each of the last five public programs formed by the sponsor.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-525, filed 11/21/83.]

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

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

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

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

(4) All services or goods for which the sponsor is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid, which contract may only be modified by a vote of the majority of the limited partners. Said contract shall contain a clause allowing termination without penalty on 60 days notice.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-530, filed 11/21/83.]

**WAC 460-31A-535 Rebates, kickbacks and reciprocal arrangements.** (1) No rebates or give-ups may be received by the sponsor nor may the sponsor participate in any reciprocal business arrangements which would circumvent these rules. Furthermore the prospectus and program charter documents shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or promoters.

(2) No sponsor shall directly or indirectly pay or award any commissions or other compensation to any person engaged by a potential investor for investment advice as an inducement to such adviser to advise the purchaser of interests in a particular program: *Provided, however,* That this clause shall not prohibit the normal sales commissions payable to a registered broker-dealer or other properly licensed person for selling program interests.

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

**WAC 460-31A-540 Commingling.** The funds of a program shall not be commingled with the funds of any other person.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-540, filed 11/21/83.]

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

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

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

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

(a) The two programs have identical investment objectives.

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

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

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

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

(f) The prospectus must disclose the potential risk of impasse on joint venture decisions since neither program controls and the potential risk that while one program may buy the property from the other joint venturer, in the event of a sale, it may not have the resources to do so.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-545, filed 11/21/83.]

**WAC 460-31A-550 Lending practices.** (1) On financing made available to the program by the sponsor, the sponsor may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated lending institutions on comparable loans for the same purpose in the same locality of the property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by either a first or a junior or all-inclusive trust deed, mortgage or encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance. Except as permitted by subsection (2) of this section, the sponsor shall be prohibited from providing permanent financing for the program.

(2) An "all-inclusive" or "wrap-around" note and deed of trust (the "all-inclusive note" herein) may be used to finance the purchase of property by the program only if the following conditions are complied with:

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

(b) The program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance, and

(c) A paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph (a) above, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the program.

(1990 Ed.)

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-550, filed 11/21/83.]

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

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

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

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

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

(5) The sponsor demonstrates the presence of extraordinary circumstances as required by WAC 460-31A-530 and otherwise complies with subdivisions (2), (3), and (4) thereunder.

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

**WAC 460-31A-560 Completion bond requirements.** The completion of property acquired which is under construction should be guaranteed at the price contracted by an adequate completion bond or other satisfactory arrangements.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-560, filed 11/21/83.]

**WAC 460-31A-565 Requirement for real property appraisal.** All real property acquisitions must be supported by an appraisal prepared by a competent, independent appraiser. The appraisal shall be maintained in the sponsor's records for at least five years, and shall be available for inspection and duplication by any participant. The prospectus shall contain notice of this right.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-565, filed 11/21/83.]

**WAC 460-31A-570 Nonspecified property programs.** In addition to other rules in this chapter, the following special provisions in WAC 460-31A-575 through 460-31A-605 shall apply to nonspecified property programs.

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[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-570, filed 11/21/83.]

**WAC 460-31A-575 Minimum capitalization.** A nonspecified property program shall provide for a minimum gross proceeds from the offering of not less than \$1,000,000.00 to be available for investment in properties.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-575, filed 11/21/83.]

**WAC 460-31A-580 Experience of sponsor.** For nonspecified property programs, the sponsor or at least one of its principals must establish that he has had the equivalent of not less than five years experience in the real estate business in an executive capacity and two years experience in the management and acquisition of the type of properties to be acquired or otherwise must demonstrate to the satisfaction of the administrator that he has sufficient knowledge and experience to acquire and manage the type of properties proposed to be acquired by the nonspecified property program.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-580, filed 11/21/83.]

**WAC 460-31A-585 Statement of investment objectives.** A nonspecified property program shall state types of properties in which it proposes to invest, such as first-user apartment projects, subsequent-user apartment projects, shopping centers, office buildings, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program and the experience of the sponsors. As a minimum the following restrictions on investment objectives shall be observed:

(1) Unimproved or nonincome producing property shall not be acquired except in amounts and upon terms which can be financed by the program's proceeds or from cash flow;

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

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

(4) The statement shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-585, filed 11/21/83.]

**WAC 460-31A-590 Period of offering and expenditure of proceeds.** No offering of securities in a nonspecified property program may extend for more than one year from the date of effectiveness. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U.S. Treasury bonds or bills. Any proceeds of the offering of securities not invested within two years from the date of effectiveness (except

for necessary operating capital) shall be distributed pro rata to the partners as a return of capital so long as the adjusted investment in properties is in compliance with section WAC 460-31A-470.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-590, filed 11/21/83.]

**WAC 460-31A-595 Special reports.** At least quarterly, a "special report" of real property acquisitions within the prior quarter shall be sent to all participants until the proceeds are invested or returned to the partners as set forth in WAC 460-31A-590. Such notice shall describe the real properties, and include a description of the geographic locale and of the market upon which the sponsor is relying in projecting successful operation of the properties. All facts which reasonably appear to the sponsor to materially influence the value of the property should be disclosed. The "special report" shall include, by way of illustration and not of limitation, a statement of the date and amount of the appraised value, if applicable, a statement of the actual purchase price including terms of the purchase, a statement of the total amount of cash expended by the program to acquire each property and a statement regarding the amount of proceeds in the program which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the program.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-595, filed 11/21/83.]

**WAC 460-31A-600 Assessments.** Plans calling for installment payments, warrants, options, or other staged or deferred payments shall not be allowed.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-600, filed 11/21/83.]

**WAC 460-31A-605 Multiple programs.** Sponsors shall not be permitted to offer for sale more than one nonspecified property program at any point in time unless the programs have different investment objectives. Additionally, new offerings by the same sponsor shall not be permitted if that sponsor has not substantially committed or placed the funds raised from similar nonspecified property programs.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-605, filed 11/21/83.]

**WAC 460-31A-610 Rights and obligations of participants--Meetings.** Meetings of the program may be called by the sponsor or the participants holding more than ten percent of the then outstanding limited partnership interests, for any matters for which the participants may vote as set forth in the limited partnership agreement. A list of the names and addresses of all participants shall be maintained as part of the books and records of the limited partnership and shall be made available on request to any participants or his representative at his cost. Upon receipt of a written request either in person or by registered mail stating the

purpose(s) of the meeting, the sponsor shall provide all participants within ten days after receipt of said request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after receipt of said request, at a time and place convenient to participants.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-610, filed 11/21/83.]

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

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-615, filed 11/21/83.]

**WAC 460-31A-620 Reports to holders of limited partnership interests.** The partnership agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the following reports:

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

- (a) A balance sheet, which may be unaudited,
- (b) A statement of income for the quarter then ended, which may be unaudited, and
- (c) A cash flow statement for the quarter then ended, which may be unaudited, and
- (d) Other pertinent information regarding the program and its activities during the quarter covered by the report;

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

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

(4) In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing (i) a balance sheet as of the end of its fiscal year and statements of income, partners' equity, and changes in financial position and a cash flow statement, for the year then ended, all of which, except the cash

flow statement, shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of an independent certified public accountant, (ii) a report of the activities of the program during the period covered by the report, and (iii) where projections have been provided to the holders of limited partnership interests, a table comparing the projections previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to limited partners for the period covered thereby and shall separately identify distributions from (a) cash flow from operations during the period, (b) cash flow from operations during a prior period which had been held as reserves, (c) proceeds from disposition of property and investments, (d) lease payments on net leases with builders and sellers, and (e) reserves from the gross proceeds of the offering originally obtained from the limited partners.

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

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

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-620, filed 11/21/83.]

**WAC 460-31A-625 Access to records.** The participants and their designated representatives shall be permitted access to all records of the program at all reasonable times.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-625, filed 11/21/83.]

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

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

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

In the case of assignments, where the assignee does not become a substituted limited partner, the program shall recognize the assignment not later than the last day of the calendar month following receipt of notice of assignment and required documentation.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-630, filed 11/21/83.]

**WAC 460-31A-635 Redemption of program interests.** Ordinarily, the program and the sponsor may not be mandatorily obligated to redeem or repurchase any of its program interests, although the program and the sponsor may not be precluded from purchasing such outstanding interests if such purchase does not impair the capital or the operation of the program. Notwithstanding the foregoing, a real estate program may provide for mandatory redemption rights under the following necessitous circumstances:

- (1) Death or legal incapacity of the owner, or
- (2) A substantial reduction in the owner's net worth or income provided that (a) the program has sufficient cash to make the purchase, (b) the purchase will not be in violation of applicable legal requirements and (c) not more than 15 percent of the outstanding units are purchased in any year.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-635, filed 11/21/83.]

**WAC 460-31A-640 Transferability of program interests.** Restrictions on assignment of limited partnership interests will not be allowed. Restrictions on the substitution of a limited partner are generally disfavored and will be allowed only to the extent necessary to preserve the tax status of the partnership and any restriction must be supported by opinion of counsel.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-640, filed 11/21/83.]

**WAC 460-31A-645 Assessments and defaults.** (1) Except in the case of nonspecified property programs, as provided in WAC 460-31A-600, if the anticipated cash flow from property (after payment of debt service and all operating expenses) is not sufficient to pay taxes or special assessments imposed by governmental or quasi-governmental units, the program agreement may include a provision for assessability to meet such deficiencies, including those obligations of a defaulting participant. Assessability must be limited to the foregoing obligations, and all amounts derived from such assessments must be applied only to satisfaction of said obligations.

(2) In the event of a default in the payment of assessments by a participant his interests shall not be subject to forfeiture, but may be subject to a reasonable penalty for failure to meet his commitment. Provided that the arrangements are fair, this may take the form of reducing his proportionate interest in the program, subordinating his interest to that of nondefaulting partners, a forced sale complying with applicable procedures for notice and sale, the lending of the amount necessary to meet his commitment by the other participants or a fixing of the value of his interest by independent appraisal

or other suitable formula with provision for a delayed payment to him for his interest not beyond a reasonable period, but a debt security issued for such interest should not have a claim prior to that of the other investors in the event of liquidation.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-645, filed 11/21/83.]

**WAC 460-31A-650 Sales literature.** Sales literature, sales presentations (including prepared presentations to prospective investors at group meetings) and advertising used in the offer or sale of partnership interests shall conform in all applicable respects to requirements of filing, disclosure and adequacy currently imposed on sales literature, sales presentations and advertising used in the sale of corporate securities and chapter 460-28A WAC.

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

**WAC 460-31A-655 Group meetings.** All advertisements of and oral or written invitations to "seminars" or other group meetings at which program interests are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such program interests for sale, the minimum purchase price thereof, and the name of the sponsor, underwriter or selling agent. No cash, merchandise or other item of value shall be offered as an inducement to any prospective participants to attend any such meeting. In connection with the offer or sale of program interests, no general offer shall be made of "free" or "bargain price" trips to visit property in which the program or proposed program has invested or intends to invest.

All written or prepared audio-visual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the administrator not less than three business days prior to the first use thereof. This section and WAC 460-31A-650 shall not apply to meetings consisting only of representatives of securities broker-dealers.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-655, filed 11/21/83.]

**WAC 460-31A-660 Contents of prospectus.** The prospectus shall meet the requirements of Guide 5 as promulgated under general Securities and Exchange Commission guides for the preparation of registration statements relating to interests in real estate limited partnerships.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-660, filed 11/21/83.]

**WAC 460-31A-665 Use of forecasts.** The presentation of predicted future results of operations of real estate programs shall be permitted but not required for specified property programs investing primarily in improved property and shall be prohibited for nonspecified property programs or specified property programs investing primarily in unimproved land. The covers of the



prospectus must contain in bold face language one of the following statements:

(1) For specified property program:

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

(2) For nonspecified property and unimproved land programs:

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

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

**WAC 460-31A-670 Forecasts for specified property programs.** Forecasts for specified property programs shall be included in the prospectus, offering circular or sales material of the program only if they comply with WAC 460-31A-675 through 460-31A-695.

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

**WAC 460-31A-675 Realistic forecasts.** Forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Forecasts should be reviewed by an independent certified public accountant in accordance with the Guide for a Review of a Financial Forecast as promulgated by the American Institute of Certified Public Accountants, and that person or firm should be identified in the prospectus or offering circular as being responsible for the preparation of the forecasts. No forecasts shall be permitted in any sales literature which does not appear in the prospectus or offering circular. If any forecasts are included in the sales literature, all forecasts must be presented.

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

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

- (1) Annual predicted revenue by source; including the occupancy rate used in predicting rental revenue;
- (2) Annual predicted expenses;
- (3) Mortgage obligation—annual payments for principal and interest, points and financing fees, shown as dollars, not percentages;
- (4) The required occupancy rate in order to meet debt service and all expenses;

(1990 Ed.)

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

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

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

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

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

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-680, filed 11/21/83.]

**WAC 460-31A-685 Presentation of forecasts.** (1) Forecasts shall prominently display a statement to the effect that they represent a mere prediction of future events based on assumptions which may or may not occur and may not be relied upon to indicate the actual results which will be obtained.

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

(3) When a sale-leaseback is employed, the statement that the seller is assuming the operating risk and consequently may have charged a higher price for the property must be included.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-685, filed 11/21/83.]

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

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

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

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

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-690, filed 11/21/83.]

**WAC 460-31A-695 Forecasts for unimproved property programs.** Forecasts shall not be allowed for unimproved land. Instead, a table of deferred payments specifying the various holding costs, i.e., interest, taxes, and insurance shall be inserted. However, where the

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program intends to develop and sell the land as its primary business, a detailed cash flow statement showing the timing of expenditures and anticipated revenues shall be required. Additionally, the consequences of a delayed selling program shall be shown.

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

**WAC 460-31A-700 Fiduciary duty.** The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in his immediate possession or control, and that he shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program.

In addition, the program shall not permit the participant to contract away the fiduciary duty owed to the participant by the sponsor under the common law.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-700, filed 11/21/83.]

**WAC 460-31A-705 Deferred payments.** Arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

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

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

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

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

(5) In the event of a default in the payment of deferred payments by a participant, his interests may be subjected to a reasonable penalty, as set forth in WAC 460-31A-645.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-705, filed 11/21/83.]

**WAC 460-31A-710 Reserves.** Provision should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements and contingencies. Normally, not less than five percent of the offering proceeds will be considered adequate.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-31A-710, filed 11/21/83.]

**WAC 460-31A-715 Reinvestment of cash flow and proceeds on disposition of property.** Reinvestment of cash flow (excluding proceeds resulting from a disposition or refinancing of property) shall not be allowed. The

partnership agreement and the prospectus shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the prospectus.

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

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

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

(2) A balance sheet for each noncorporate sponsor (including individual partners or individual joint ventures of a sponsor) as of a time not more than one hundred thirty-five days prior to the date of filing an application; such balance sheet shall be examined and reported upon by an independent certified public accountant under the limited review standards set forth by the American Institute of Certified Public Accountants, and shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus, or in the alternative, a representation that such sponsor meets the net worth requirements of WAC 460-31A-425.

[Statutory Authority: RCW 21.20.180(8) and 21.20.210(14), 83-23-087 (Order SDO-215-83), § 460-31A-720, filed 11/21/83.]

**WAC 460-31A-725 Opinions of counsel.** The application for registration shall contain a favorable ruling from the Internal Revenue Service or an opinion of independent counsel to the effect that the issuer will be taxed as a "partnership" and not as an "association" for federal income tax purposes. An opinion of counsel shall be in form and substance satisfactory to the administrator and shall be unqualified except to the extent permitted by the administrator. However, an opinion of counsel may be based on reasonable assumptions, such as:

(1) Facts or proposed operations as set forth in the offering circular or prospectus and organizational documents; (2) the absence of future changes in applicable laws; (3) the securities offered are paid for; (4) compliance with certain procedures such as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate; and (5) the continued maintenance of or compliance with certain financial, ownership, or other requirements by the issuer or sponsor. The administrator may request from counsel as supplemental information such supporting legal memoranda and an analysis as he shall deem

appropriate under the circumstances. To the extent the opinion of counsel or Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or sponsor, the offering circular or prospectus shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance.

There shall be included also an opinion of independent counsel to the effect that the securities being offered are duly authorized or created and validly issued interests to the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer.

[Statutory Authority: RCW 21.20.450. 83-23-087 (Order SDO-215-83), § 460-31A-725, filed 11/21/83.]

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

WAC 460-31A-430; 460-31A-475; 460-31A-480; 460-31A-485; 460-31A-490; 460-31A-495; 460-31A-500; 460-31A-505; 460-31A-510; 460-31A-515; 460-31A-520; 460-31A-525; 460-31A-530; 460-31A-535; 460-31A-540; 460-31A-545; 460-31A-550; 460-31A-565; 460-31A-585; 460-31A-590; 460-31A-595; 460-31A-600; 460-31A-610; 460-31A-615; 460-31A-620; 460-31A-625; 460-31A-630; 460-31A-635; 460-31A-645; 460-31A-700; 460-31A-705(4); 460-31A-710; 460-31A-715.

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

### Chapter 460-32A WAC

#### REAL ESTATE PROGRAMS NOT EXCEEDING FIVE MILLION DOLLARS

##### WAC

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460-32A-225	Nonspecified property programs.
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460-32A-240	Period of offering and expenditure of proceeds.
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460-32A-400	Sales in condominiums or units in real estate development.

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

460-32A-300	Oil and gas programs. [Statutory Authority: RCW 21.20.450. 79-09-028 (Order SD-57-79), § 460-32A-300, filed 8/14/79; Order 304, § 460-32A-300, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.
460-32A-305	Records and payment of proceeds. [Order 304, § 460-32A-305, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.
460-32A-310	Oil and gas interests other than working interests. [Order 304, § 460-32A-310, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.
460-32A-315	Title. [Order 304, § 460-32A-315, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.
460-32A-320	Regulation B filings. [Order 304, § 460-32A-320, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.
460-32A-325	Funds to be held in trust. [Order 304, § 460-32A-325, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.] Repealed by 83-23-087 (Order SDO-215-83), filed 11/21/83. Statutory Authority: RCW 21.20.450.

**WAC 460-32A-010 Application.** (1) The rules contained in WAC 460-32A-010 through 460-32A-255 apply to registrations of real estate programs in the form of limited partnerships (herein sometimes called "programs" or "partnerships") whose total offering does not exceed five million dollars. These rules will be applied by analogy to real estate programs in other forms. While applications not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown certain regulations may be modified or waived by the administrator.

(2) Where the individual characteristics of specific programs warrant modification from these standards, they will be accommodated, insofar as possible while still being consistent with the spirit of these rules.

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

(4) The term "total offering" in subsection (1) above shall be liberally construed and shall, for the purposes of WAC 460-32A-010(1), apply to the total dollar amount of securities which is filed with the state securities division under one registration statement.

[Statutory Authority: RCW 21.20.450, 83-23-087 (Order SDO-215-83), § 460-32A-010, filed 11/21/83; Order 304, § 460-32A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

The above standards are presumptively reasonable. The inability of a sponsor to meet the above requirements will not preclude a person from acting as a sponsor if he can demonstrate that there are sufficient safeguards in the program so that the net worth requirements are not necessary to the viability of the program.

[Order 304, § 460-32A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

(b) Compensation for acquisition services.

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

(d) Compensation for program management.

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

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

(3) The application for registration and the prospectus must fully disclose and itemize all consideration which may be received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the

consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.

[Order 304, § 460-32A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

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

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

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

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

(6) All compensation paid for acquisition services must be paid ratably as the investors pay for their security with the exception of the real estate commission.

[Order 304, § 460-32A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

(a) Provide quarterly reports

(b) Maintain an office that shall be open and accessible for investor contacts at a minimum of 20 hours per week

(c) Provide semiannual reports of receipts and disbursements, and

(d) Retain a qualified accountant to prepare financial reports that are required.

[Order 304, § 460-32A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-031 Expenses paid to third parties.** Expenses of the program paid for by the program will not be scrutinized as to reasonableness, if paid to a non-affiliated third party as the result of an arm-length transaction.

[Order 304, § 460-32A-031, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

(1) An interest equal to 25 percent in the undistributed amounts remaining after payment to investors of an amount equal to 100 percent of capital contribution; or

(2) An interest to:

(a) 10 percent of distributions from cash available for distribution (defined in WAC 460-10A-090); and

(b) 10 percent of distributions to investors from the proceeds from the sale or refinancing of properties after payment to investors of an amount equal to 100 percent of capital contributions, plus an amount equal to 6 percent of capital contributions per annum cumulative, less the sum of prior distributions to investors.

[Order 304, § 460-32A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

(a) The transaction occurs at the formation of the program, and is fully disclosed in its prospectus or offering circular, and

(b) The property is sold upon terms fair to the program and at a price not in excess of its appraised value, and

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

risk of obtaining a rezoning of the property and its subsequent rezoning, or some other extraordinary event which in fact increases the value of the property.

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

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

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

(4) Dealings with related programs. A program shall not acquire property from a program in which the sponsor has an interest.

[Order 304, § 460-32A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

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

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

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

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

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

(7) Such exchange, however, is prohibited between the program and the sponsor.

[Order 304, § 460-32A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-055 Exclusive agreement.** A program shall not give a sponsor an exclusive right to sell or exclusive employment to sell property for the program.

[Order 304, § 460-32A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

If the sponsor participates with an independent broker on resale, then these limitations shall apply to commissions paid by the program to all persons involved in the transaction.

[Order SD-131-77, § 460-32A-057, filed 11/23/77.]

**WAC 460-32A-060 Commissions on reinvestment.** A program shall not pay, directly or indirectly, a commission or fee to a sponsor in connection with the reinvestment of the proceeds of the resale, exchange, or refinancing of program property.

[Order 304, § 460-32A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

(a) The compensation, price or fee therefore must be comparable and competitive with the compensation, price or fee of any other person who is rendering comparable services of selling or leasing comparable goods

which could reasonably be made available to the program and shall be on competitive terms, and

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

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

(d) All services or goods for which the syndicator is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid.

[Order 304, § 460-32A-065, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

(2) No sponsor shall directly or indirectly pay or award any commissions or other compensation to any person engaged by a potential investor for investment advice as an inducement to such adviser to advise the purchaser of interests in a particular program: *Provided, however,* That this clause shall not prohibit the normal sales commissions payable to a registered broker-dealer or other properly licensed person for selling program interests.

[Order 304, § 460-32A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-075 Commingling of funds.** The funds of a program shall not be commingled with the funds of any other person (defined in WAC 460-10A-130).

[Order 304, § 460-32A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-080 Expenses of program.** All expenses of the programs shall be billed directly to the programs. Reimbursements (other than for organization and offering expenses) to any affiliate or promoter shall not be allowed.

[Order 304, § 460-32A-080, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-085 Investments in other programs.** Investments in limited partnership interests of another program shall be prohibited; however, nothing herein shall preclude the investment in partnerships or ventures which own and operate a particular property. In such event, duplicate property management or other fees shall not be permitted, and such partnership or venture shall provide for its limited partners all of the rights and obligations required to be provided by the original program in these rules. Further, such prohibitions shall not apply

to programs under Sections 236 or 221 (d)(3) of the National Housing Act or any similar programs that may be enacted.

[Order 304, § 460-32A-085, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

(b) The program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph (a) above, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the syndicate.

[Order 304, § 460-32A-090, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-095 Development or construction contracts.** As to the property which the sponsor is developing or as to which he has agreed to develop or construct substantial improvements such development or construction must be at a firm contract price. In addition, such development or construction shall be fully disclosed in the prospectus or offering circular and such development or construction shall be upon terms fair to the program and at a price not in excess of comparable development or construction.

[Order 304, § 460-32A-095, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-100 Performance bond requirement.** The completion of property acquired which is under construction should be guaranteed at the price contracted by an adequate performance bond or other satisfactory arrangements.

[Order 304, § 460-32A-100, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

(1990 Ed.)

**WAC 460-32A-105 Requirement for real property appraisal.** All real property acquisitions may be required to be supported by an appraisal prepared according to the standards of the American Institute of Real Estate Appraisers by a competent, independent appraiser who is a member of the American Institute of Real Estate Appraisers, a designated member of the Society of Real Estate Appraisers, or approved for such an appraisal problem by the Washington state department of highways. The appraisal shall be maintained in the sponsor's records for at least five years, and shall be available for inspection and duplication by any participant. The prospectus may contain notice of this right.

[Order 304, § 460-32A-105, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

[Order 304, § 460-32A-145, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-150 Voting rights of limited partners.** The limited partnership agreement must provide that the limited partners can remove the general partner(s) for cause and dissolve the program by a vote representing at least sixty-six percent of the then outstanding partnership interests.

[Order 304, § 460-32A-150, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-155 Outsider replacement of general partner.** If the general partner is a corporation the limited partnership agreement shall provide that if an outsider is to acquire controlling stock of the corporate general partner all limited partners shall be informed of such proposed acquisition in writing at least thirty days prior to consummation of such acquisition. This notice shall include adequate disclosure of the details of the pending acquisition so as to allow the limited partners to make an informed decision as to its effect upon their investment. The general partner shall call a meeting within twenty days immediately following the written

notice. At said meeting, rejection of the pending acquisition by sixty-six percent, or more, of the then outstanding limited partnership interest shall disallow the acquisition. A vote by proxy shall be afforded.

[Order 304, § 460-32A-155, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

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

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

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

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

(4) Where assessments have been made during any period covered by any report required by paragraphs (1), (2) and (3) hereof, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments.

[Order 304, § 460-32A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-165 Access to records.** The limited partners and their designated representatives shall be permitted access to all records of the program at all reasonable times. This requirement may not be circumvented by lump sum payments to management companies or other entities who then disburse the funds.

[Order 304, § 460-32A-165, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-170 Redemption of program interests.** Ordinarily, the program and the sponsor may not be mandatorily obligated to redeem or repurchase any of its program interests, although the program and the sponsor may not be precluded from purchasing such outstanding interest if such purchase does not impair the capital or the operation of the program.

[Order 304, § 460-32A-170, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

[Order 304, § 460-32A-175, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

[Order 304, § 460-32A-180, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

(2) Group meetings. All advertisements of and oral or written invitations to "seminars" or other group meetings at which program interests are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such program interests for sale,



the minimum purchase price thereof, and the name of the sponsor, underwriter or selling agent. No cash, merchandise or other item of value shall be offered as an inducement to any prospective participant to attend any such meeting. In connection with the offer or sale of program interests, no general offer shall be made of "free" or "bargain price" trips to visit property in which the program or proposed program has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the administrator not less than three business days prior to the first use thereof. The foregoing paragraphs (b) and (2) shall not apply to meetings consisting only of representatives of securities broker-dealers.

[Order 304, § 460-32A-185, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

(4) Business experience. The business experience of the sponsor(s), general partner(s), principal officers of a corporate general partner (chairman of the board, president, vice president, treasurer, secretary or any person having similar authority or performing like functions) and other managers of the program, shall be prominently disclosed in the prospectus, such disclosure indicating their business experience for the past ten years. The lack of experience or limited experience of the sponsor, general partner, principal officer of a corporate general partner, or other manager of a real estate program shall be prominently disclosed in the prospectus.

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

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

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

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

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

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

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

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

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

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

(13) The partnership.

(a) Date of formation.

(b) Place of formation.

(c) General partners.

(d) Initial partners.

(e) Address and telephone number of partnership and general partner.

(f) Duration.

(g) Information called for in items (a) through (f) hereof shall be given for any other programs, such as local programs operating property, in which the public program invests.

(14) Summary of terms of the partnership.

(a) Powers of the sponsor.

(b) Rights and liabilities of the participants.

(c) Allocation of distributions.

(d) Provisions for replacement and maintenance reserves.

(e) Termination and dissolution.

(f) Meetings and reports.

(g) Amendment of agreement.

(h) Provision for additional assessments.

(i) Other pertinent matter.

(15) Federal tax consequences.

(a) A summary of an opinion of tax counsel acceptable to the administrator and/or a ruling from the Internal Revenue Service covering major tax questions relative to the program, which may be based on reasonable assumptions such as those described in WAC 460-32A-200. To the extent the opinion of counsel of Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or sponsor(s), the prospectus shall to the extent practicable, contain representations that such requirements or conditions have been met and that the sponsors shall use their best efforts to continue to meet such requirements or conditions.

(b) Tax treatment of the program.

(c) Tax treatment of the participants.

(d) Allocation of depreciation, investment, credit, construction interest, points, etc.

(e) Method of depreciation, useful life, applicable recapture provisions and consequences thereof.

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

(g) Possibility of requirement for filing tax returns with states in which properties are held.

(16) Limited partnership interests.

(a) Amount

(b) Minimum purchase

(c) Assessability

(d) Transferability

(e) Voting rights

(17) Plan of distribution.

(a) Discounts and commissions.

(b) Estimated fee and expenses paid or reimbursed by program.

(c) Indemnification provisions.

(d) Terms of payment.

(e) Identity of underwriter, managing dealer or selling agent.

(f) Type of underwriting — best efforts or firm commitment.

(g) Minimum and maximum sales.

(h) Escrow provisions.

(i) Material relationship of underwriter to program, if any.

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

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

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

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

(22) Opinions of counsel. It shall include reference to an opinion of counsel to the effect that the securities being offered are duly authorized or created and validly issued interests in the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer. It shall include reference to an opinion of counsel to the effect that the issuer will be taxed as a "partnership" and not as an "association" for federal income tax purposes. An opinion of counsel shall be in form and substance satisfactory to the administrator and shall be unqualified except to the extent permitted by the administrator. However, an opinion of counsel may be based on reasonable assumptions, such as: (1) Facts or proposed operations as set forth in the offering circular or prospectus and organizational documents; (2) the absence of future changes in

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

(23) Financial statements and projections. As provided elsewhere in these regulations and RCW 21.20.210(14).

(24) Summary of agreement of limited partnership.

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

(26) Additional information. Any additional information which may be material should be included; further, in furnishing the information requested in the paragraphs listed above, the instruction for completing Form S-11 for filing under the Securities Act of 1933 should be referred to as a guide for the information to be furnished.

[Order 304, § 460-32A-195, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

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

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

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

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

(iv) The types of property acquired, by general classification, and cost separately stating the aggregate cash payment for noncapital items, such as prepaid interest,

points, prepaid management fees, etc., whether new or used and depreciation method used; Date of purchase by program; the initial encumbrances, amount of reduction thereof, and whether fully amortized by equal payments over term or whether balloon payments or maturity will occur during contemplated holding period; the ratio of the sponsor's projected net operating income before debt service to the total purchase price for the property; and, if the properties have been sold, the date and results of sale in terms of whether the property was sold at a gain or loss taking into account recapture of depreciation and in terms of type of consideration received and the terms thereof.

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

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

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

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

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

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

(c) Information required to be set forth in subparagraphs (v), (vi) and (vii) or subsection (b) above shall be supported in the application for qualification by an affidavit of the sponsor that the performance summary is a fair representation of the information contained in the audited financial statements or the federal income tax returns of the program.

[Order 304, § 460-32A-196, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

(ii) Annual predicted expenses;

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

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

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

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

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

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

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

(c) Presentation.

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

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

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

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

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

[Order 304, § 460-32A-200, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

[Title 460 WAC—p 60]

**WAC 460-32A-205 Fiduciary duty.** The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in his immediate possession or control, and that he shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program.

[Order 304, § 460-32A-205, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

[Order 304, § 460-32A-210, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-215 Reserves.** Provisions should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements and contingencies. Normally, not less than 5 percent of the offering proceeds will be considered adequate.

[Order 304, § 460-32A-215, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-220 Reinvestment of cash flow and proceeds on disposition of property.** Reinvestment of cash flow (defined in WAC 460-10A-080) (excluding proceeds resulting from a disposition or refinancing of property) shall not be allowed. The partnership agreement and the prospectus shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the prospectus.

[Order 304, § 460-32A-220, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-225 Nonspecified property programs.** The following special provisions shall apply to nonspecified property programs (defined in WAC 460-10A-115).

[Order 304, § 460-32A-225, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

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

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

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

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

(5) The statement shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof.

[Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-32A-235, filed 3/19/80; Order 304, § 460-32A-235, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-240 Period of offering and expenditure of proceeds.** No offering of securities in a nonspecified property program may extend for more than one year from the date of effectiveness. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U.S. Treasury bonds or bills. Any proceeds of the offering of the securities not invested within two years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the partners as a return of capital.

[Order 304, § 460-32A-240, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

by the program to acquire each property, and a statement regarding the amount of proceeds in the program which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the program.

[Order 304, § 460-32A-245, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-250 Assessments.** Nonspecified property programs calling for assessments shall not be allowed.

[Order 304, § 460-32A-250, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

**WAC 460-32A-255 Multiple programs.** Sponsors shall be discouraged from offering for sale more than one unspecified property program at any point in time unless the programs have different investment objectives. Similarly, the continuance of new offerings by the same sponsor shall not be looked upon with favor if that sponsor has not substantially committed or placed the funds raised from preexisting unspecified property programs.

[Order 304, § 460-32A-255, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

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

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

the Commission under the provisions of Section 15 of that Act.

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

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

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

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

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

"The existence of various kinds of collateral arrangements may cause an offering of condominium units to involve an offering of investment contracts or interests in

a profit sharing agreement. The presence of such arrangements indicates that the offeror is offering an opportunity through which the purchaser may earn a return on his investment through the managerial efforts of the promoters or a third party in their operation of the enterprise.

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

"Also, the condominium units may be offered with a contract or agreement that places restrictions, such as required use of an exclusive rental agent or limitations on the period of time the owner may occupy the unit, on the purchaser's occupancy or rental of the property purchased. Such restrictions suggest that the purchaser is in fact investing in a business enterprise, the return from which will be substantially dependent on the success of the managerial efforts of other persons. In such cases, registration of the resulting investment contract would be required.

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

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

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

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

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

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

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

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

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

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

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

[Order 304, § 460-32A-400, filed 2/28/75, effective 4/1/75. Formerly chapter 460-32 WAC.]

### Chapter 460-33A WAC

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

WAC

460-33A-010 Application.

(1990 Ed.)

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460-33A-130	Notice of complaint.

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

460-33A-016	Registration of real property securities. [Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-016, filed 1/13/83.] Repealed by 86-21-107 (Order SDO-140-86), filed 10/20/86. Statutory Authority: RCW 21.20.450.
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**WAC 460-33A-010 Application.** (1) The rules contained in these regulations are intended to offer an optional method for the registration of "mortgage paper securities" as defined in WAC 460-33A-015(5). While applications for registration not conforming to the standards contained herein shall be looked upon with disfavor, where good cause is shown, certain rules of this chapter may be modified or waived by the administrator, if consistent with the spirit of these rules.

(2) The application of these rules does not affect those issuers to which or to whom the debenture company sections of the Securities Act apply.

(3) These rules do not affect the statutory exemptions provided for by, nor will they be applied to, those securities or transactions exempt under RCW 21.20.310 or 21.20.320. These rules are not intended to expand or restrict the definition of "security" as defined in RCW 21.20.005(12).

(4) The rules contained in this chapter are only applicable to mortgage paper securities, mortgage broker-dealers and mortgage salespersons registering under this chapter.

[Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-010, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-010, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-010, filed 1/13/83.]

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

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

(2) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005(3) and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(3) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of offering the mortgage paper securities including a description of the mortgage broker-dealer.

(4) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005(2) and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(5) "Mortgage paper securities" means notes and bonds, or other debt securities secured by mortgages or trust deeds on real or personal property or by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing, including any guarantee of or interest in the foregoing.

(6) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

[Statutory Authority: RCW 21.20.450, 89-17-078 (Order SDO-124-89), § 460-33A-015, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-015, filed 10/20/86; 83-15-043 (Order SDO-90-83), § 460-33A-015, filed 7/19/83; 83-03-025 (Order SDO-7-83), § 460-33A-015, filed 1/13/83.]

**WAC 460-33A-017 Registration not required.** Each of the following need not be registered under the rules of this chapter:

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

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

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

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

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

(6) Any transaction in a note or bond secured by real property that is exempted under RCW 21.20.320(5): *Provided*, That a transaction shall not be deemed to be within the exemption granted by RCW 21.20.320(5) if any of the following services are offered or included by the mortgage broker-dealer or its affiliates:

(a) Guarantying the note or contract against loss at any time; or

(b) Guarantying that payments of principal or interest will be paid; or

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

(d) Guarantying a specific yield or return on the note or contract; or

(e) Paying any interest or premium by the mortgage broker-dealer for a period prior to actual purchase and delivery of the note or contract; or

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

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

(h) Promising the investor a market for the resale of the mortgage paper securities.

[Statutory Authority: RCW 21.20.450, 89-17-078 (Order SDO-124-89), § 460-33A-017, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-017, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-017, filed 1/13/83.]

**WAC 460-33A-020 Optional registration procedures for mortgage paper securities.** (1) An applicant for registration of a mortgage paper securities offering may elect to register the offering under the rules of this chapter in lieu of following the registration procedure for debt securities under the Securities Act of Washington. Registration under this chapter requires the filing of a registration application as prescribed by the director of the department of licensing accompanied by the following:

(a) The general offering circular;

(b) A sample specific offering circular;

(c) The mortgage paper escrow and trust agreement;

(d) The mortgage paper service agreement;

(e) The mortgage broker-dealer's articles of incorporation and bylaws or articles of organization;

(f) Sample documents to include any note, bond, mortgage, deed of trust, master deed of trust, real or personal property contract, indenture, guaranty, or other such instrument;

(g) The financial statements of the mortgage broker-dealer, including a balance sheet, profit and loss statement, and statement of changes in financial position as set forth in RCW 21.20.210(14);

(h) The subscription and acknowledgement agreements;



(i) An opinion of counsel, if requested, on the legality and validity of the mortgage paper securities being issued;

(j) An opinion of counsel, if requested, regarding the application of the usury laws to the mortgage paper securities being offered;

(k) Such other information as the director may prescribe or request.

(2) The securities division will examine the mortgage paper securities general offering circular for disclosure of material facts involving the purchase of the mortgage paper securities, for disclosure of the general description of the business of the mortgage broker-dealer and for the compliance with the applicable rules of this chapter.

(3) The securities division will examine the sample and actual specific offering circular for disclosure of material facts concerning specific mortgage paper securities offerings. Copies of the specific offering circulars to be given to each offeree shall be filed with the securities division at least five business days before they are given to investors or as otherwise required by the securities administrator.

(4) If the estimated proceeds of the mortgage paper securities offering, together with the proceeds from registered offerings during the year preceding the date of the filing of the mortgage paper securities offering, exceed five hundred thousand dollars, the financial statements of the mortgage broker-dealer in subsection (1)(g) of this section shall be audited as required by RCW 21.20.210 (14)(c).

[Statutory Authority: RCW 21.20.180(8), 21.20.210(14) and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-020, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-020, filed 1/13/83.]

**WAC 460-33A-025 Contents of the general offering circular.** (1) This registration shall provide for disclosure of all material facts which shall include the sections enumerated in the general offering circular form prescribed by the administrator of securities.

(2) The general offering circular shall set forth the minimum suitability standards for investors as provided in WAC 460-33A-031.

(3) The general offering circular must state that purchases of mortgage paper securities may be made only by check payable to the mortgage broker-dealer's escrow account.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-025, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-025, filed 1/13/83.]

**WAC 460-33A-030 Contents of the specific offering circular.** The specific offering circular shall provide for disclosure of all material facts and shall contain at least the applicable sections enumerated in the specific offering circular form prescribed by the administrator of securities.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-030, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-030, filed 1/13/83.]

**WAC 460-33A-031 Minimum investor suitability requirements.** In any sale of mortgage paper registered under the rules of this chapter, the mortgage broker-dealer shall have reasonable grounds to believe and after making reasonable inquiry shall believe that both the conditions of subsections (1) and (2) of this section are satisfied:

(1) The investment is suitable for the purchaser upon the basis of the facts disclosed by the purchaser as to the purchaser's other security holdings and as to the purchaser's financial situation and needs; and

(2) The purchaser qualifies for at least one of the following:

(a) The purchaser's investment in the mortgage paper securities being offered does not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse: *Provided*, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;

(b) The purchaser's investment in the mortgage paper securities being offered does not exceed ten percent of the purchaser's (including spouse) taxable income for federal tax purposes for the last year: *Provided*, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;

(c) The purchaser, either alone or with a purchaser representative as defined in WAC 460-44A-501, has, as stated in WAC 460-44A-505, such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(d) The purchaser is an accredited investor as defined in WAC 460-44A-501.

[Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-031, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-031, filed 10/20/86.]

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

(1) Offerings involving construction loans may not be sold using the rules of this chapter.

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

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

(4) Offerings involving pooling or participations involving more than ten investors may not be sold under the optional registration of the rules of this chapter. However, where only first liens are involved, the registrant may apply for a modification to allow sales up to twenty five investors. A husband and wife and their dependents may be counted as one investor.

(5) Offerings in which the real property or other collateral securing the notes, bonds or obligations is not within this state.

(6) Offerings involving notes, bonds, or obligations secured by a single mortgage, deed of trust or real estate contract or a single group of mortgages, deeds of trust or real estate contracts that are not identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser or investor is not upon the same terms; provided however, an offering may be subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued.

(7) Offerings in which the aggregate principal amount of the notes, bonds or obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, exceed the following percentages of the current market value (as determined by WAC 460-33A-105) of the real property:

(a) Single-family residences - eighty percent.

(b) Commercial and income-producing properties - seventy percent.

(c) Unimproved property which has been zoned for commercial or residential development - fifty percent.

(d) Other real property - forty percent.

(8) Offerings involving real estate paper in which a default in any note, bond or obligation will not be a default in all notes, bonds or obligations concerning a specific loan, and in which the holders of fifty percent or more of the unpaid dollar amount of the notes, bonds or obligations cannot determine and direct the actions to be taken on behalf of all holders in the event of default or with respect to other matters requiring the direction or approval of the holders or designation of a broker, servicing agent or other person to act on the holders' behalf.

(9) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-035, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-035, filed 1/13/83.]

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

(a) Minimum net liquid assets of twenty-five thousand dollars, to be maintained at all times.

(i) To calculate the twenty-five thousand dollars, total all liquid assets then subtract from that all current liabilities.

(ii) The mortgage broker-dealer shall complete an affidavit semiannually to verify to the administrator that this requirement is being met. Such report shall be on such a form as may be prescribed by the director; or

(b) A minimum net worth of \$1,000,000 or more as determined by generally accepted accounting principles; or

(c) File a surety bond in the face amount of fifty thousand dollars satisfactory to the securities administrator; or

(d) In the event the mortgage broker-dealer and any affiliate does not handle the funds of lenders and borrowers, minimum net liquid assets of five thousand dollars, as determined in (a) of this subsection, to be maintained at all times.

(2) Mortgage broker-dealers failing to meet the above mentioned minimum net liquid assets must inform the securities division of such failure within seventy-two hours at which time all sales of securities must be suspended.

[Statutory Authority: RCW 21.20.060 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-040, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-040, filed 1/13/83.]

**WAC 460-33A-050 Banks and financial institutions.** For the purposes of WAC 460-33A-017 and only for the purposes of offering or selling "mortgage paper securities" the following definitions shall apply:

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

"Financial institutions" shall include (1) any corporation or other entity with a net worth of \$1,000,000 or more and (2) any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other similarly regulated financial institution, or a holding company for any of the foregoing.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-050, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-050, filed 1/13/83.]

**WAC 460-33A-055 Escrow account.** (1) All funds received from lenders or investors to purchase mortgage paper securities shall be deposited within forty-eight hours of receipt in an escrow account acceptable to the administrator. The escrow account shall be maintained in a financial institution as set forth in WAC 460-33A-050(2) or with an independent escrow agent registered under chapter 18.44 RCW. All checks by which purchases or investments are made shall be made payable to the escrow account. All necessary disbursements shall be made from the escrow account. No person acting as a mortgage broker-dealer or his agent shall accept any purchase or investment funds for mortgage paper securities in advance of the time necessary to fund the loan transaction. No such fund shall be maintained in such account for longer than sixty days without disbursing the funds and the escrow agreement must provide that funds maintained in such account shall be returned to the investor on the sixty-first day from deposit in the account.

No interest earned on escrow account funds shall be paid to the mortgage broker-dealer or its affiliates. The escrow agreement must provide that funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the lenders or investors.

(2) The escrow agreements shall provide that the funds will not be subject to the mortgage broker-dealer's creditors.

(3) The account shall be subject to an audit at any reasonable time by the securities division.

[Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-055, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.250 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-055, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-055, filed 1/13/83.]

**WAC 460-33A-060 Recordation.** Every person acting as a mortgage broker-dealer or his agent selling mortgage paper securities must record the applicable instrument in the applicable place before any disbursement of funds takes place. Such recorded instrument must bear the name of the lienholder or beneficiary and not the name of the mortgage broker-dealer unless the mortgage broker-dealer is the actual lender.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-060, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-060, filed 1/13/83.]

**WAC 460-33A-065 Service agreement.** (1) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, who undertakes to service a mortgage paper security shall have a written agreement with the lender or holder of the contract setting forth specifically what services will be provided.

(2) The service agreement shall require:

(a) That payments received on the note, bond or obligation be immediately deposited to a trust account and in accordance with the provisions of this rule;

(b) That such payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received;

(c) That payments received on the note, bond or obligation shall be transmitted to the purchasers or lenders pro rata according to their respective interests within thirty-one days after receipt thereof by the agent. If the source for such payment is not the maker of the note, bond or obligation, the agent will inform the purchasers or lenders of the source for payment. A broker or servicing agent who transmits to the purchasers or lenders such broker's and/or servicing agent's own funds to cover payments due from the borrower but unpaid may recover the amount of such advances from the trust fund when the past due payment is received; and

(d) That the servicing agent will file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on such prior encumbrances or on the note or notes subject to the servicing agreement.

[Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-065, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-065, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-065, filed 1/13/83.]

**WAC 460-33A-070 Origination and assignment.** Every mortgage broker-dealer or his agent or affiliate that originates loan transactions and later intends to offer these as mortgage paper securities to lenders or investors must obtain the permission of the administrator of securities. Every mortgage broker-dealer or his agent or affiliate that purchases or takes mortgage paper in his own name, whether for his own account or the account of others, and intends to offer such as mortgage paper securities to lenders or investors must disclose his interest in the property or the transaction and must not disburse funds from the escrow account until the applicable instrument has been properly recorded in the name of the lenders or investors.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-070, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-070, filed 1/13/83.]

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

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

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-075, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-075, filed 1/13/83.]

**WAC 460-33A-080 Registration and examination of mortgage broker-dealers.** (1) Every person acting as a mortgage broker-dealer, unless otherwise exempt, must first obtain a broker-dealer's license under the provisions of chapter 460-20A WAC.

(2) Every applicant under this section shall provide the securities administrator proof of compliance with either WAC 460-33A-040 or 460-20A-100.

[Statutory Authority: RCW 21.20.450. 89-17-078 (Order SDO-124-89), § 460-33A-080, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.060 and 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-080, filed 10/20/86. Statutory Authority: RCW 21.20.450. 83-03-025 (Order SDO-7-83), § 460-33A-080, filed 1/13/83.]

**WAC 460-33A-085 Registration and examination of mortgage securities salespersons.** Every person acting as a mortgage securities salesperson, unless otherwise exempt, must first obtain a salesperson's license under the provisions of chapter 460-20A WAC and be employed by a broker-dealer or mortgage broker-dealer.

[Statutory Authority: RCW 21.20.450, 89-17-078 (Order SDO-124-89), § 460-33A-085, filed 8/17/89, effective 9/17/89. Statutory Authority: RCW 21.20.070, 21.20.080 and 21.20.450, 86-21-107 (Order SDO-140-86), § 460-33A-085, filed 10/20/86. Statutory Authority: RCW 21.20.450, 83-03-025 (Order SDO-7-83), § 460-33A-085, filed 1/13/83.]

**WAC 460-33A-090 Dishonest and unethical practices—Mortgage broker-dealers.** The phrase "dishonest and unethical practices" as used in RCW 21.20.110(7) includes the following acts by mortgage broker-dealers or mortgage salespersons:

(1) To cause investors to sign reconveyances of title, quit claim deeds, or any other like instruments before such instruments are required in connection with some transaction such as payoff or foreclosure.

(2) To fail to deliver, within a reasonable time, to the investor proceeds, received by the mortgage broker-dealer, of sale, refinancing, or foreclosure of an obligation owned by the investor.

(3) To engage in any dishonest or unethical practice as set forth in WAC 460-20A-420 or 460-20A-425.

[Statutory Authority: RCW 21.20.450, 86-21-107 (Order SDO-140-86), § 460-33A-090, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-090, filed 1/13/83.]

**WAC 460-33A-100 Written statement.** Every person selling a mortgage paper security that is required to be registered under the regulations of this chapter shall require the purchaser or his agent to sign a receipt for the general and the specific offering circular containing all the applicable information required by WAC 460-33A-025 and 460-33A-030 before the purchaser shall be obligated to fund the transaction. No person shall permit the purchaser to sign such receipt if any of the required information is omitted. The mortgage broker-dealer shall retain an executed copy of receipt for four years.

[Statutory Authority: RCW 21.20.450, 86-21-107 (Order SDO-140-86), § 460-33A-100, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-100, filed 1/13/83.]

**WAC 460-33A-105 Appraisals.** (1) An appraisal of each parcel of real property or other property which secures or relates to a transaction subject to the provisions of this chapter shall be made by an independent appraiser. The appraisal shall be kept on file by the mortgage broker-dealer for four years.

(2) The appraisal shall reflect the value of the property on an "as is" not an "as built" basis.

(3) The appraisal shall conform to the following requirements:

(a) The appraisal shall be prepared by a competent, independent appraiser acceptable to the administrator; and

(b) Effective July 1, 1990, the appraiser shall be certified in conformance with the Certified Real Estate Appraiser Act, chapter 414, Laws of 1989.

(4) An appraisal made within the twelve-month period prior to the sale of the mortgage paper security is sufficient.

(5) The written consent of any appraiser who is named as having prepared an appraisal in connection

with the mortgage paper securities offering shall be filed with the securities administrator.

(6) In lieu of the appraisal required by this section, the mortgage broker-dealer may elect to rely on the most recent tax assessment valuation of each parcel of real property.

[Statutory Authority: RCW 21.20.450, 89-17-078 (Order SDO-124-89), § 460-33A-105, filed 8/17/89, effective 9/17/89; 86-21-107 (Order SDO-140-86), § 460-33A-105, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-105, filed 1/13/83.]

**WAC 460-33A-110 Financial statements and annual reports.** Every mortgage broker-dealer shall file with the administrator upon registration under WAC 460-33A-080 and annually, a report containing financial statements prepared in accordance with generally accepted accounting principles by an independent certified public accountant, or by the chief executive and accounting officers of the mortgage broker-dealer who shall certify that they each have verified the material accuracy and completeness of the information contained therein. The annual report shall include, but not be limited to the receipt and disposition of all funds handled in connection with transactions subject to the rules of this chapter. The annual report shall be filed with the administrator within ninety days after the close of the period of the report unless, for good cause shown, the administrator in writing, extends the time therefor. The report shall contain the following:

(1) Total number of sales, as principal or agent, subject to the rules of this chapter during the period, and

(2) Total dollar volume of such sales.

[Statutory Authority: RCW 21.20.450, 86-21-107 (Order SDO-140-86), § 460-33A-110, filed 10/20/86; 83-03-025 (Order SDO-7-83), § 460-33A-110, filed 1/13/83.]

**WAC 460-33A-115 Books and records.** Each mortgage broker-dealer shall make and keep current in this state the following books and records relating to his business:

(1) A file for each loan which the mortgage broker-dealer has funded through sales of mortgage paper, which a file shall contain the following:

(a) A copy of each appraisal or tax assessment valuation required by WAC 460-33A-105;

(b) Copies of all documents of title representing current interests in the real property securing the loan;

(c) Copies of title insurance policies and any other insurance policies on the real property securing the loan;

(d) The acknowledgement of receipt by each investor of the specific and general offering circulars;

(e) The subscription agreement for each investor;

(f) A copy of the investor suitability questionnaire for each investor;

(g) The specific offering circular for the offering;

(h) All correspondence with investors relating to the loan;

(i) The loan application of the borrower and all supporting documents such as the credit report on the borrower;

(j) Copies of all service agreements with investors relating to the loan;

(k) Copies of the escrow instructions relating to the loan.

(2) A file for each loan for which the mortgage broker-dealer is soliciting funds through the sale of mortgage paper, which file shall contain the same items required under subsection (1) of this section except for those items which are not yet available because the mortgage paper has not yet been sold.

(3) A file containing copies of all service agreements required under WAC 460-33A-065.

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

(5) Ledgers, accounts (or other records) itemizing separately each cash account of every customer including, but not limited to, all funds in the mortgage broker's escrow and trust account, all proceeds of sale, refinancing, foreclosure, or similar transaction involving the real or personal property securing a loan funded by sales of mortgage paper, and all moneys collected from the borrower on behalf of the investors.

(6) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net liquid assets as of the trial balance date pursuant to WAC 460-33A-040. Such trial balances and computations shall be prepared currently at least once a month.

(7) A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

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

(b) His date of birth.

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

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

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

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

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

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

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

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-115, filed 10/20/86.]

**WAC 460-33A-120 Preservation of records.** The records required in WAC 460-33A-115 of these rules shall be preserved according to the following requirements:

(1) Every mortgage broker-dealer shall preserve in this state for a period of not less than three years, the first two years of which shall be in an easily accessible place:

(a) All records required to be made pursuant to WAC 460-33A-115 of these rules.

(b) All check books, bank statements, cancelled checks and cash reconciliations except for the loan files required to be kept by WAC 460-33A-115(1) which shall be kept in an accessible place for the life of the loans involved.

(c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the broker-dealer, as such.

(d) Originals of all communications received and copies of all communications sent by the broker-dealer (including inter-office memoranda and communications) relating to his business, as such.

(e) All trial balances, computations of net liquid assets (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the broker-dealer, as such.

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

(g) All written agreements (or copies thereof) entered into by the mortgage broker-dealer relating to his business as such, including agreements with respect to any account.

(2) Every mortgage broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all charter documents, minute books and stock certificate books.

(3) Every mortgage broker-dealer shall maintain and preserve in an easily accessible place all records required under WAC 460-33A-115(7) of these rules until at least three years after the agent has terminated his employment and any other connection with the broker-dealer.

(4) If a person who has been subject to the requirements of this section ceases to hold a certificate as a mortgage broker-dealer, such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-120, filed 10/20/86.]

**WAC 460-33A-125 Notice of changes by mortgage broker-dealers.** (1) Each mortgage broker-dealer shall, upon any change in the information contained in its application for a certificate (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information (and in any event within thirty days after the change occurs).

(2) Each mortgage broker-dealer shall notify the administrator of the employment of any new agent in Washington and of the termination of employment of any agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment or termination, and the location of the office in which he was or will be employed by submitting a completed NASD Form U-4 to the administrator or the administrator's designee within twenty-one days after the event occurs.

(3) Each mortgage broker-dealer shall notify the administrator of the termination of employment of any agent in Washington by submitting a completed NASD Form U-5 to the administrator or the administrator's designee, within thirty days after the event occurs.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-125, filed 10/20/86.]

**WAC 460-33A-130 Notice of complaint.** Each mortgage broker-dealer who has filed a complaint against any of its partners, officers, directors, agents licensed in Washington with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the administrator, within ten days following its filing with such other agency or bonding company.

[Statutory Authority: RCW 21.20.450. 86-21-107 (Order SDO-140-86), § 460-33A-130, filed 10/20/86.]

## Chapter 460-34A WAC OIL AND GAS PROGRAMS

### WAC

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**WAC 460-34A-010 Application.** The rules contained in this chapter apply to the registration of oil and gas programs in the form of limited partnerships (herein sometimes called "programs" or "partnerships") and will be applied by analogy to oil and gas programs in other forms. While applications not conforming to the standards contained in this chapter shall be looked upon with disfavor, where good cause is shown, certain standards may be modified or waived by the administrator if consistent with the spirit of these rules.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-010, filed 9/14/83.]

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

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

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

(3) "Cost" means, when used with respect to property,

(a) The sum of the prices paid by the seller for such property, including bonuses;

(b) Title insurance or examinations costs, brokers' commissions, filing fees, recording costs, transfer taxes, if any, and like charges in connection with the acquisition of such property; and

(c) Rentals and ad valorem taxes paid by the seller with respect to such property to the date of its transfer to the buyer, interest on funds used to acquire or maintain such property, and such portion of the seller's reasonable, necessary and actual expenses for geological, geophysical, seismic, land engineering, drafting, accounting, legal and other like services allocated to the property in accordance with generally accepted industry practices, except for expenses in connection with the past drilling of wells which are not producers of sufficient quantities of oil or gas to make commercially reasonable their continued operations, and provided that the expenses enumerated in subsection (c) hereof shall have been incurred not more than 36 months prior to the purchase by the program; provided that such period may be extended, at the discretion of the administrator upon proper justification. When used with respect to services, "cost" means the reasonable, necessary and actual expense incurred by the seller on behalf of the program in providing such services, determined in accordance with

generally accepted accounting principles. As used elsewhere, "cost" means the price paid by the seller in an arm's-length transaction.

(4) "Development well" means a well drilled as an additional well to the same reservoir as other producing wells on a lease, or drilled on an offset lease usually not more than one location away from a well producing from the same reservoir.

(5) "Exploratory well" means a well drilled either

(a) In search of a new and as yet undiscovered pool of oil or gas, or

(b) With the hope of greatly extending the limits of a pool already developed.

(6) "Farm-out" means an agreement whereby the owner of the leasehold or working interest agrees to assign his interest in certain specific acreage to the assignees, retaining some interest such as an overriding royalty interest, an oil and gas payment, offset acreage or other type of interest, subject to the drilling of one or more specific wells or other performance as a condition of the assignment.

(7) "General and administrative overhead" means all customary and routine legal, accounting, geological, engineering, well supervision fee, travel, office rent, telephone, secretarial, salaries, and other incidental reasonable expenses necessary to the conduct of the partnership business, and generated by the sponsor.

(8) "Landowner's royalty interest" means an interest in production, or the proceeds therefrom, to be received free and clear of all costs of development, operation, or maintenance, reserved by a landowner upon the creation of an oil and gas lease.

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

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

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

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

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

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

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

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

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

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

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

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

Under no circumstances should estimates for proved undeveloped reserves be attributable to any acreage for

which an application of fluid injection or other improved recovery technique is contemplated, unless such techniques have been proved effective by actual tests in the area and in the same reservoir. If warranted, however, a narrative discussion can be provided to point out those areas where future drilling or other operations may develop oil and gas production which at the time of filing is considered too uncertain to be expressed as numerical estimates for proved reserves.

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

(17) "Working interest" means an interest in an oil and gas leasehold which is subject to some portion of the expense of development, operation or maintenance.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-015, filed 9/14/83.]

**WAC 460-34A-020 Net worth, experience and investment requirements of sponsor. (1) Net worth.**

(a) The financial condition of the general partner must be commensurate with any financial obligations assumed by it. The general partner must specifically have a minimum aggregate net worth at all times equal to 5% of participants' capital in all existing programs organized by the general partner plus 5% of total subscriptions in the program being offered, but such minimum required net worth shall in no case be less than \$100,000 nor shall net worth in excess of \$1,000,000 be required. An individual general partner's net worth shall be determined exclusive of home, home furnishings and automobiles. Audited balance sheets of sponsors shall be furnished, except that in the event that an individual is a general partner, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual general partner may be accepted for the purpose of determining said required net worth, in the discretion of the administrator, and such unaudited statement will be carefully scrutinized.

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

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

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

(3) In appropriate cases, the administrator may require that the sponsor purchase for cash a minimum amount of participation units.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-020, filed 9/14/83.]

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

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

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

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

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

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

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



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

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

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

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

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

(5) The broker-dealer or sponsor shall retain for at least six years all records necessary to substantiate the fact that program interests were sold only to purchasers for whom such securities were suitable. The administrator may require broker-dealers or sponsors to obtain from the purchaser a letter justifying the suitability of such investment.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-025, filed 9/14/83.]

**WAC 460-34A-030 Minimum investment.** For a drilling program, the minimum purchase shall not be less than \$5,000 and the initial investment by a participant not less than \$5,000, and for an income or production purchase program, the minimum purchase shall not be less than \$2,500 and the initial investment not less than \$2,500. All of the aforesaid minimums must be paid within 12 months from the date the program commences. Assignability of the unit must be limited so that no assignee (transferee) or assignor (transferor) may hold less than the prescribed minimums except by gifts or by operation of law.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-030, filed 9/14/83.]

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

- (a) Organization and offering expenses and management fees
- (b) Promotional compensation; and
- (c) Program expenses.

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

**WAC 460-34A-037 Organization and offering expenses, and management fees.** (1) All organization and

offering expenses incurred in order to sell program units shall be reasonable, and the total of those organization and offering expenses, which may be charged to the program, plus any management fee, which may be charged by the sponsor, shall not exceed 15% of the initial subscriptions.

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

(3) All items of compensation to underwriters or broker-dealers, including, but not limited to, selling commissions, expenses, rights of first refusal, consulting fees, finders' fees and all other items of compensation of any kind or description paid by the program, directly or indirectly, shall be taken into consideration in computing the amount of allowable selling commissions.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-037, filed 9/14/83.]

**WAC 460-34A-040 Promotional compensation.** (1) The participation in program revenues by the sponsor and any affiliate shall be reasonable taking into account all relevant factors. Overriding royalty interests will be looked upon with disfavor. Sponsors' interests in revenues will be considered reasonable if they meet the standards set forth below. Any other combination of fees, working or net profits interests, or interests subordinated to payout to the public investors, which are justified, in light of the entire offering, may be considered reasonable by the administrator. References in this section WAC 460-34A-040 to a percent of revenues refer to that percent of program revenues, and references to a percent working interest refer to that percent of the working interest owned by a program in a prospect, if the program does not own the total working interest.

(2) **Drilling program--Functional allocation.**

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

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

(ii) The sponsor's revenue sharing may be increased in additional increments of 5% for each additional 5% increase in the percentage of capital contributions to the program (excluding any capital contributions from the sponsor or any of his affiliates) agreed to be paid by him

up to a maximum of 50% of revenues subject to sponsor's agreement to pay in any case all capital expenditures.

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

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

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

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

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

(g) The sharing arrangement set forth in this subsection shall not be considered presumptively reasonable (i) in the case of sharing arrangements in which the sponsor

pays all development costs and exploratory wells are drilled on prospects which cannot reasonably be expected to require developmental drilling if the exploratory drilling is successful, or (ii) in the case of sharing arrangements where the sponsor does not pay his share or category of costs on a current basis.

(3) **Drilling programs—Subordinated or reversionary working interest.**

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

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

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

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

(4) **Income or production purchase programs.**

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

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

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

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

(5) The sharing arrangement set forth above in this rule shall not be considered presumptively reasonable for a sponsor who does not actively participate in obtaining

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

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

(b) If the capability is provided by third parties, it will be deemed presumptively unreasonable if the contracts do not provide the program with comparable capabilities to those that would be provided if the sponsor's capability was in-house, including, among other things, availability of technical expertise and the provision of adequate response time. Unless the sponsor can adequately demonstrate the availability of such capability, it will not be permitted to elect any of the sharing of costs and revenues described in the rules of this chapter.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-040, filed 9/14/83.]

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

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

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

(1990 Ed.)

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

ESTIMATED PROGRAM EXPENSES

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

	Minimum Program	Maximum Program
General and administrative overhead		
Legal . . . . .	\$ . . . . .	\$ . . . . .
Accounting . . . . .		
Geological . . . . .		
Engineering . . . . .		
Well Supervision fees . . . . .		
Travel . . . . .		
Office rent . . . . .		
Telephone . . . . .		
Secretarial . . . . .		
	Minimum Program	Maximum Program
Salaries of officers, directors and other principals . . . . .	\$ . . . . .	\$ . . . . .
Other (list) . . . . .		
Direct expenses		
External legal . . . . .		
Audit fees . . . . .		
Independent engineering reports . . . . .		
Outside computer services . . . . .		
Other (list) . . . . .		
<b>TOTAL</b>	<b>\$ . . . . .</b>	<b>\$ . . . . .</b>

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

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

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

**WAC 460-34A-050 Transactions with affiliates. (1) Sales and purchases of properties.**

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

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

(A) The prospectus discloses the fact that the sponsor will sell, transfer or convey property to the program and

whether or not the property will be sold from the sponsor's existing inventory.

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

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

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

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

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

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

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

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

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

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

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

**(2) Restricted and prohibited transactions.**

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

(b) A sponsor shall not take any action with respect to the assets or property of the program which does not

primarily benefit the program, including among other things:

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

(ii) The commitment of future production.

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

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

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

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

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

(ii) The compensation, price or rental therefor is competitive with the compensation, price or rental of other persons in the area engaged in the business of rendering comparable services or selling or leasing comparable equipment and supplies which could reasonably be made available to the program,

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

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

(g) With the exception of compensation authorized by WAC 460-34A-040, all services for which the sponsor and any affiliated person is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid.

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

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

### (3) Custody of program funds and properties.

(a) Funds of a program must not be commingled with funds of any other entity and the prospectus must so state. Advance payments to the sponsor or its affiliates should be prohibited, except where necessary to secure

tax benefits of prepaid drilling costs. Advance payments should not include nonrefundable payments for completion costs prior to the time that a decision is made that the well or wells warrant a completion attempt.

(b) Program properties may be held in the names of nominees temporarily to facilitate the acquisition of properties and for similar valid purposes. On a permanent basis, program properties may be held in the name of a special nominee entity organized by the general partner provided the nominee's sole purpose is holding of record title for oil and gas properties and it engages in no other business and incurs no other liabilities.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-050, filed 9/14/83.]

### WAC 460-34A-055 Farm-outs. (1) Disclosure.

(a) The prospectus shall state the circumstances under which the sponsor may farm-out a prospect or lease, the ability to farm-out to other public programs of the sponsor or its affiliates and any limitations on the ability to farm-out to such public programs.

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

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

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

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

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

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

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

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

### (2) Conflict of interest.

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

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

(c) Except as required by WAC 460-34A-050 (1)(a)(i)(C) the prospectus shall state that the program shall acquire only those leases that are reasonably acquired for the stated purpose of the program and no leases shall be acquired for the purpose of subsequent

sale or farm-out, unless the acquisition of such leases by the program is made after a well has been drilled to a depth sufficient to indicate that such an acquisition is believed to be in the best interests of the program.

(d) The prospectus shall state that the sponsor shall not farm-out a lease for the primary purpose of avoiding payment of sponsor's costs relating to drilling a lease or prospect.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-055, filed 9/14/83.]

**WAC 460-34A-060 Rights and obligations of participants.** (1) **Meetings.** Meetings of the participants may be called by the general partner(s) or by participants holding more than 10% of the then outstanding units for any matters for which the participants may vote as set forth in the limited partnership agreement or charter document. Such call for a meeting shall be deemed to have been made upon receipt by the general partner of a written request from holders of the requisite percentage of units stating the purpose(s) of the meeting. The general partner shall deposit in the United States mails within fifteen days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than thirty nor more than sixty days after the date of mailing of said notice, at a reasonable time and place.

(2) **Annual and periodic reports.**

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

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

(ii) A description of each geological prospect in which the program owns an interest, except succeeding reports

need contain only material changes, if any, regarding such geological prospects.

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

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

(v) Annually, beginning with the fiscal year succeeding the fiscal year in which the program commenced operations, a computation of the total oil and gas proven reserves of the program and dollar value thereof at then existing prices and of each participant's interest in such reserve value. The reserve computations shall be based upon engineering reports prepared by qualified independent petroleum consultants. In addition, there shall be included an estimate of the time required for the extraction of such reserves and the present worth of such reserves, with a statement that because of the time period required to extract such reserves the present value of revenues to be obtained in the future is less than if immediately receivable. In addition to the annual computation and estimate required, as soon as possible, and in no event more than 90 days after the occurrence of an event leading to a reduction of such reserves of the program of more than 10%, excluding reduction as a result of normal production, a computation and estimate shall be sent to each participant.

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

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

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

(3) **Access to program records.**

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

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

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

(4) **Transferability of program interests.** Restrictions on assignment of units will be looked upon with disfavor. Restrictions on the substitution of a limited partner are generally disfavored and will be allowed only to the extent necessary to preserve the tax status of the partnership and any restriction must be supported by opinion of counsel as to its legal necessity.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-060, filed 9/14/83.]

**WAC 460-34A-065 Assessability and defaults.** (1) In appropriate cases there may be a provision for assessability: *Provided, however,* That the maximum amount for voluntary assessments shall not exceed 100% of initial subscriptions and for mandatory assessments shall not exceed 25% of initial subscriptions, and provided further, that in no case shall the total of all assessments exceed 100% of initial subscriptions. All assessments shall be made solely for the purpose of conducting subsequent operation on prospects upon which evaluation had begun during a program's initial operation, or on leases sufficiently related to such prospects as to merit, in the sponsor's judgment, additional operations to fully develop those prospects. In such cases, the aggregate offering price of the units as set forth in the application shall include and show separately the basic unit offering price and the maximum amount of the assessment.

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

(a) For voluntary assessments,

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

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

(b) For mandatory assessments,

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

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

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

(c) In order to make any assessment, the sponsor shall include with the call for such assessment a statement of the purpose and intended use of the proceeds from such assessment, a statement of the reduction to be imposed for failure of the participant to meet the assessment, and to the extent practicable, a summary of pertinent geological data on the relevant properties to which the assessments relate.

(d) The above alternatives, set forth in (a) and (b), are not exclusive and other provisions demonstrated to be essentially equivalent to these alternatives may be permitted by the administrator.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-065, filed 9/14/83.]

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

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-070, filed 9/14/83.]

**WAC 460-34A-075 Minimum program capital.** The minimum amount of funds to activate a partnership shall be sufficient to accomplish the objectives of the program, including "spreading the risk." Any minimum less than \$1,000,000 will be presumed to be inadequate to spread the risk of the public investors. In those instances where it appears unlikely that the stated objectives of the program can be achieved with the minimum subscriptions, the administrator may require a greater

amount or a reduction of the stated objectives of the program. Provision must be made for the return to public investors of one hundred percent of paid subscriptions in the event that the established minimum to activate the program is not reached. All funds received prior to activation of the program must be deposited with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus.

[Statutory Authority: RCW 21.20.250 and 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-075, filed 9/14/83.]

**WAC 460-34A-080 Temporary investment of proceeds.** Until proceeds from the public offering are invested in the program's operations, such proceeds may be temporarily invested in short-term highly liquid investments, where there is appropriate safety of principal, such as U.S. Treasury Bills.

[Statutory Authority: RCW 21.20.250 and 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-080, filed 9/14/83.]

**WAC 460-34A-085 Return of unused proceeds.** (1) Any proceeds of the public offering of a drilling program not used, or committed for use, in the program's operations within one year of the closing of the offering, except for necessary operating capital, must be distributed pro rata to the participants as a return of capital, and without any deductions for selling and offering expenses.

(2) If a production purchase program sponsor has not used, or committed for use, an amount equal to 80% of the proceeds of the public offering which are available for property acquisitions within one year of the closing of the offering, such sponsor shall not be permitted to continue offering interests in subsequent programs of a similar nature, until such time as the requirement has been met. If the production purchase program sponsor has not used, or committed for use, an amount equal to 100% of the proceeds of the public offering which are available for property acquisitions within two years of the closing of the offering, any excess proceeds, except for necessary operating capital, must be distributed pro rata to the participants as a return on capital, and without any charges for selling or offering expenses being allocable to the return of capital.

[Statutory Authority: RCW 21.20.250 and 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-085, filed 9/14/83.]

**WAC 460-34A-090 Deferred payments.** (1) Arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

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

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

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

(2) In the event of a default in the payment of any deferred payment when due, the participant's percentage interests in the program shall not be subject to forfeiture but may be subject to a reasonable reduction for failure of the participant to meet his commitment. Reduction provisions will be considered reasonable if they conform to the reduction provisions provided for in WAC 460-34A-065 (2)(b) relating to defaults of mandatory assessments.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-090, filed 9/14/83.]

**WAC 460-34A-095 Cash redemption values.** When cash redemption values of units are computed, such value must be clearly based on appraisal of properties by qualified independent petroleum consultants. Any evaluation by company personnel must be based on such independent appraisals. Any redemption must be for cash. No redemption shall be considered effective until after cash payments have been paid to the participants.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-095, filed 9/14/83.]

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

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

(b) Such offer is made to all participants;

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

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

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

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

(2) For the purposes of this section, an "offer of exchange" includes any security of a program which is convertible into a security issued by the sponsor or another issuer.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-100, filed 9/14/83.]

**WAC 460-34A-105 Reinvestment of revenues.** No offering will be approved by the administrator that includes a provision which requires that the participant reinvest his share of distributable cash distributions.



Subject to compliance with applicable securities laws, a program may make available to its participants a voluntary plan for systematic reinvestments in such program or in any other program. No sales commissions may be charged the participants, however, for effecting such reinvestment.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-105, filed 9/14/83.]

**WAC 460-34A-110 Distribution of revenues.** From time to time and not less often than quarterly, the sponsor will review the program's accounts to determine whether cash distributions are appropriate. The program will distribute pro rata to the participants' funds received by the program and allocated to their accounts which the sponsor deems unnecessary to retain in the program. Cash distributions from the program to the sponsor shall only be made out of funds properly allocated to the sponsor's account.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-110, filed 9/14/83.]

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

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

(3) Sales commissions based on assessment of units are prohibited.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-112, filed 9/14/83.]

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

(2) **Group meetings.** All advertisements of, and oral or written invitations to "seminars" or other group meetings at which units are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such units for sale, the minimum purchase price

thereof, the suitability standards to be employed, and the name of the person selling the units. No cash, merchandise or other items of value shall be offered as an inducement to any prospective participants to attend any such meeting.

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

(4) The provisions of this section shall not apply to meetings consisting only of representatives of securities broker-dealers.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-115, filed 9/14/83.]

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

(a) Initial information:

(i) Information on cover page. There should be set forth briefly on the cover page of the prospectus a summary which should include the following: The title and general nature of the units being offered; the maximum aggregate amount of the offering; the minimum amount of net proceeds; the minimum subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or, if none, or if such commissions are paid by the sponsor); the nature of any sharing arrangement and fees; the estimated amount to be paid during the first twelve months following commencement of operations for administrative and similar services.

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

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

(c) Risk factors. Offerees should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in the program. These paragraphs should include a cross-reference to further information in the prospectus. In particular, in those cases where the sponsor has elected the compensation arrangement described in WAC 460-34A-040(2), there should be set forth the fact that there is a conflict where the sponsor must decide whether to complete a well which is anticipated to have a marginal return since the tangible costs he would incur would not appear to warrant his investment, although completion of the well would be in the best interests of the participants.

(d) Business experience. The business experience of the sponsor(s), including general partner(s), principal officers of a corporate general partner (chairman of the board, president, vice president, treasurer, secretary or any person having similar authority or performing like function) and others responsible for the program, shall

be prominently disclosed in the prospectus, such disclosure indicating their business experience for the past ten years. The lack of experience or limited experience of the sponsor, or other person supplying services to the program, shall be prominently disclosed in the prospectus.

(e) Compensation:

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

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

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

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

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

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

(i) Investment objectives and policies. Describe the investment objectives and policies of the program (indicating whether they may be changed by the general partner without a vote of the limited partners) and, if and to the extent that the sponsor is able to do so, the approximate percentage of assets which the program may invest in any one type of investment. State the approximate percentage of exploratory and developmental drilling to be done by the program, the method of acquisition of leases, including information as to possible farm-outs, and the approximate percentage of development drilling to be done through acquisition of offsetting leases as opposed to development of drilling sites acquired in the exploratory state. State also the expected percentage of leases where the program will not have control of drilling and operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) The program:

(i) Date of formation.

(ii) Place of formation.

(iii) Sponsor.

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

(v) Duration.

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

(o) Summary of terms of the program:

(i) Powers of the sponsor.

(ii) Rights and liabilities of the participants.

(iii) Allocation of costs and revenues.

(iv) Termination and dissolution.

(v) Meetings and reports.

(vi) Indemnification to sponsor.

(vii) Amendment of partnership agreement.

(viii) Provision for additional assessments.

(ix) Other pertinent matters.

(p) Federal tax consequences:

(i) A summary of an opinion of tax counsel acceptable to the administrator or a ruling from the IRS covering

federal tax questions relative to the program, which may be based on reasonable assumptions described in the opinion letter. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the sponsor(s), the prospectus shall to the extent practicable contain representations that such requirements or conditions have been met and that the sponsors shall use their best efforts to continue to meet such requirements or conditions.

(ii) Tax treatment of the program.

(iii) Tax treatment of the participants.

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

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

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

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

(viii) In all programs where applicable, the prospectus shall disclose that participants will have to pay federal income taxes upon program revenues allocated to their respective accounts which revenues are not distributed to the participants, but rather are used to pay other program or prospect costs attributable to their respective accounts.

(q) Units:

(i) Amount.

(ii) Minimum purchase.

(iii) Assessability.

(iv) Transferability.

(v) Voting rights.

(vi) Redemption provisions, including the basis for appraisal.

(r) Plan of distribution:

(i) Discounts and commissions.

(ii) Estimated fees and expenses paid or reimbursed by the program.

(iii) Indemnification and hold harmless provisions.

(iv) Terms of payment.

(v) Identity of underwriter, managing dealer and/or principal selling agent.

(vi) Type of underwriting—best efforts or firm commitment.

(vii) Minimum and maximum sales.

(viii) Escrow provisions.

(ix) Material relationship of underwriter to the program, if any.

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

(t) Conflicts of interest and transactions with affiliates. Describe fully any transactions and the dollar amount thereof which may be entered into between the program and the sponsor or any affiliate. Include a full

description of the material terms of any agreement and the dollar amount thereof between the program and the sponsor or any affiliate. Where the sponsor originates or promotes other programs, describe the equitable principles which will apply in resolving any conflict between the programs. In the case where the program has been in existence, include all transactions and contracts of the program with the sponsor or any affiliate during the period of such existence. All conflicts shall be set forth in one section and shall be denominated with the title of this subsection.

(u) Interest of affiliates in program property. If within the past five years the sponsor or any affiliate has been in the chain of title or had a beneficial interest in any property to be acquired by the program this fact must be disclosed.

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

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

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

(y) Additional information. Any additional information which is material should be included.

[Statutory Authority: RCW 21.20.450, 83-19-035 (Order SDO-181-83), § 460-34A-120, filed 9/14/83.]

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

**(1) Balance sheet of general partner.**

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

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

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

(3) **Balance sheet of program.** As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant, and an unaudited balance sheet as of a date not more than ninety days prior to the date of filing.

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

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

(6) **Filing of other statements.** Upon request by an applicant, the administrator may, where consistent with the protection of investors, permit the omission of one or more of the statements required under this section and the filing, in substitution thereof, of appropriate statements verifying financial information having comparable relevance to an investor in determining whether he should invest in the program.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-125, filed 9/14/83.]

**WAC 460-34A-130 Opinions of counsel.** (1) The application for qualification shall contain a favorable ruling from the IRS or an opinion of counsel to the effect that the program will be treated as a "partnership" and not as an "association taxable as a corporation" for federal income tax purposes. An opinion of counsel shall be in form satisfactory to the administrator and shall be unqualified except to the extent permitted by the administrator. However, an opinion of counsel may be based on reasonable assumptions, such as (a) facts or proposed operations as set forth in the prospectus and organization document; (b) the absence of future changes in applicable laws; (c) compliance with certain procedures such as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate, and (d) the continued maintenance of or compliance with certain financial, ownership or other requirements by the sponsor or general partner. The administrator may request from counsel as supplemental information such supporting legal memoranda and an analysis as he shall deem appropriate under the circumstances. To the extent the opinion of counsel or IRS ruling is based on the maintenance of or compliance with certain requirements or conditions by the sponsor or general partner, the prospectus shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance.

There shall be included also an opinion of counsel to the effect that the units being offered will be duly authorized or created and validly issued interests in the program, and that the liability of the participants will be limited to their respective capital contributions, except as set forth in the prospectus.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-130, filed 9/14/83.]

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

(1) In any threatened, pending or completed action, suit or proceeding to which the sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was the sponsor of the program (other than an action by or in the right of the program) involving an alleged cause of action for damages arising from the performance of oil and gas activities including exploration, development, completion, or operation or other activities relative to management and disposition of oil and gas properties or production from such properties, the program may indemnify such sponsor against expenses, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the

sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his conduct does not constitute gross negligence, wilful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program.

(2) In any threatened, pending or completed action or suit by or in the right of the program, to which the sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a participant or participants for damages arising from the activities of the sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program as specified in this subsection (2), except that no indemnification shall be made in respect of any claim, issue or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the performance of his duty to the program as specified in this subsection (2), unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

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

(4) Any indemnification under subsection (1) or (2) above, unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection (1) or (2) above.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-135, filed 9/14/83.]

**WAC 460-34A-200 Regulation B filings.** An issuer filing with the Securities and Exchange Commission under Regulation B must register its offering in the state of Washington pursuant to registration by qualification, RCW 21.20.210, and this chapter.

[Statutory Authority: RCW 21.20.450. 83-19-035 (Order SDO-181-83), § 460-34A-200, filed 9/14/83.]

## Chapter 460-36A WAC

## REAL ESTATE INVESTMENT TRUSTS

## WAC

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## DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-36A-010	Amendment of declaration of trust. [Order 304, § 460-36A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-015	Investment policy. [Order 304, § 460-36A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-020	Minimum net capital. [Order 304, § 460-36A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-025	Annual expenses. [Order 304, § 460-36A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-030	Investment and activities. [Order 304, § 460-36A-030, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-035	Period of investment advisory contract. [Order 304, § 460-36A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-040	Number and election of trustees. [Order 304, § 460-36A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-045	Removal of trustees. [Order 304, § 460-36A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-050	Terms and conditions of securities. [Order 304, § 460-36A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.
460-36A-055	Annual meetings. [Order 304, § 460-36A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-

83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

460-36A-060 Annual reports. [Order 304, § 460-36A-060, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

460-36A-065 Inspection of records. [Order 304, § 460-36A-065, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

460-36A-070 Disclosure on distribution. [Order 304, § 460-36A-070, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

460-36A-075 Termination of trust. [Order 304, § 460-36A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-36 WAC.] Repealed by 83-19-036 (Order SDO-180-83), filed 9/14/83. Statutory Authority: RCW 21.20.450.

**WAC 460-36A-100 Definitions of terms.** For the purposes of this chapter, the following definitions shall apply.

(1) "Administrator" means the administrator of securities of the department of licensing.

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

(3) "Average invested assets" for any period shall mean the average of the aggregate book value of the assets of the trust invested, directly or indirectly, in equity interests in and loans secured by real estate, before reserves for depreciation or bad debts or other similar noncash reserves computed by taking the average of such values at the end of each month during such period.

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

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

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

(7) "Net assets" means the total assets (other than intangibles) at cost before deducting depreciation or

other noncash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

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

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

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

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

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

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

(14) "Unimproved real property" means the property of a REIT which has the following three characteristics: (1) An equity interest in property which was not acquired for the purpose of producing rental or other operating income, (2) has no development or construction in process on such land, and (3) no development or construction on such land is planned in good faith to commence on such land within one year.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-100, filed 9/14/83.]

**WAC 460-36A-105 Fairness of REIT offerings.** The offer or sale of securities of a REIT may be deemed fair and equitable to public investors if any applicable statute of the jurisdiction in which the REIT is organized or its declaration of trust or any other operative instrument which may not be amended without the approval of the holders of at least a majority of the outstanding shares of the REIT contains provisions which satisfy the rules of this chapter 460-36A WAC. Registration applications not conforming to the rules of this chapter shall be looked upon with disfavor, unless for good cause shown specific rules are waived by the administrator. A public offering of equity securities of a REIT other than shares (i.e., voting shares) will be looked upon with disfavor unless it can be demonstrated that the shares of the REIT are publicly held. The voting rights per share of equity securities of the REIT (other than the publicly held equity securities of the REIT) sold in a private offering shall not exceed voting

rights which bear the same relationship to the voting rights of the publicly held shares of the REIT as the consideration paid to the REIT for each privately offered REIT share bears to the book value of each outstanding publicly held share.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-105, filed 9/14/83.]

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

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

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

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

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

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

(5) The declaration of trust shall specifically charge the independent trustees of the REIT with a fiduciary duty to the shareholders to supervise the relationship of the REIT with the adviser. The declaration of trust shall set forth specific requirements for the approval by at least a majority of the independent trustees of matters to which this section and WAC 460-36A-115, 460-36A-125, 460-36A-155, 460-36A-160, 460-36A-165, 460-36A-170, 460-36A-180 and 460-36A-190 of this chapter relate.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-110, filed 9/14/83.]

**WAC 460-36A-115 Investment policy.** The prospectus or offering circular relating to each offering of securities of a REIT must contain a statement in reasonable detail (except in coordination offerings with the securities and exchange commission) of the investment policies

and objectives of the REIT being followed at the time or intended to be followed by the trustees. Such registration statement of the securities of the REIT shall include an explanation of the borrowing policies of the REIT. The independent trustees shall review the investment policies of the REIT with sufficient frequency and at least annually to determine that the policies being followed by the REIT at any time are in the best interests of its shareholders. Each such determination and the basis therefor shall be set forth in the minutes of the trustees. All documents incorporated by reference in coordination filings shall be submitted to the administrator in connection with the application for registration of the REIT's securities.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-115, filed 9/14/83.]

**WAC 460-36A-120 Liability of shareholders.** The declaration of trust shall provide that (1) the shares of the REIT shall be nonassessable by the REIT whether a trust, corporation or other entity, (2) the shareholders of the REIT which is not a corporation shall not be personally liable on account of any of the contractual obligations undertaken by the REIT, and (3) all written contracts to which the REIT which is not a corporation is a party shall include a provision that the shareholder shall not be personally liable thereon.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-120, filed 9/14/83.]

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

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-125, filed 9/14/83.]

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

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Upon receipt of a written request either in person or by registered mail stating the purpose(s) of the meeting requested by shareholders, the REIT shall provide all shareholders, within ten business days after receipt of said request, written notice (either in person or by mail) of a meeting and the purpose of such meeting to be held on a date not less than twenty nor more than sixty days after receipt of said request, at a time and place convenient to shareholders.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-130, filed 9/14/83.]

**WAC 460-36A-135 Inspection of records.** A list of the names and addresses of all shareholders shall be maintained as part of the books and records of the REIT. Inspection of the REIT books and records (including shareholder records) by the administrator shall be provided upon request upon reasonable notice and during normal business hours. Inspection of such books and records by shareholders shall be permitted to the same extent as permitted under law applicable to shareholders of a corporation organized in the jurisdiction in which the REIT is organized.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-135, filed 9/14/83.]

**WAC 460-36A-140 Distributions.** The declaration of trust shall state the manner in which distributions to shareholders are to be determined.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-140, filed 9/14/83.]

**WAC 460-36A-145 Change in declaration of trust.** No change shall be made in the declaration of trust of the REIT without the vote or written consent of the holders of a majority of the outstanding shares.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-145, filed 9/14/83.]

**WAC 460-36A-150 Termination of REIT.** The declaration of trust shall provide for the termination of the REIT by a vote of shareholders holding a majority of its outstanding shares.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-150, filed 9/14/83.]

**WAC 460-36A-155 Advisory contract.** It shall be the duty of the trustees to evaluate the performance of the adviser before entering into or renewing an advisory contract. The criteria used in such evaluation shall be reflected in the minutes of such meeting. Each contract for the services of an adviser entered into by the trustees shall have a term of no more than one year. Each advisory contract shall be terminable by a majority of the independent trustees, or the adviser on sixty days written notice without cause. In the event of the termination of such contract, the adviser will cooperate with the REIT and take all reasonable steps requested to assist the trustees in making an orderly transition of the advisory function. The qualifications of the adviser shall be set forth in the prospectus or offering circular relating to



the initial public offering of the shares of the REIT and the trustees shall determine that any successor adviser possesses sufficient qualifications (1) to perform the advisory function for the REIT and (2) to justify the compensation provided for in its contract with the REIT.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-155, filed 9/14/83.]

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

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

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

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

(4) Additional revenues realized by the adviser and its affiliates through their relationship with the REIT, including loan administration, underwriting or broker commissions, servicing, engineering, inspection and other fees, whether paid by the REIT or by others with whom the REIT does business;

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

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

(7) The quality of the portfolio of the REIT in relationship to the investments generated by the adviser for its own account.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-160, filed 9/14/83.]

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

The total operating expenses of the trust shall (in the absence of a satisfactory showing to the contrary) be deemed to be excessive if they exceed in any fiscal year the greater of two percent of its average invested assets

or twenty-five percent of its net income for such year. The independent trustees shall have the fiduciary responsibility of limiting such expenses to amounts that do not exceed such limitations unless such independent trustees shall have made a finding that, based on such unusual or nonrecurring factors which they deem sufficient, a higher level of expenses is justified for such year. Any such finding and the reasons in support thereof shall be reflected in the minutes of the meeting of the trustees.

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

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

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

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-165, filed 9/14/83.]

**WAC 460-36A-170 Leverage.** The aggregate borrowings of the REIT, secured and unsecured, shall be reasonable in relation to the net assets of the REIT and shall be reviewed by the trustees at least quarterly. The maximum amount of such borrowings in relation to the net assets shall, in the absence of a satisfactory showing that a higher level of borrowing is appropriate, not exceed three hundred percent. Any excess in borrowing over such 300% level shall be approved by a majority of the independent trustees and disclosed to shareholders in the next quarterly report of the REIT, along with justification for such excess.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-170, filed 9/14/83.]

**WAC 460-36A-175 Minimum capital.** Prior to the initial public offering, the net assets of the REIT shall be not less than the lesser of (1) ten percent of the total net assets upon completion of such public offering, or (2) \$200,000.

[Statutory Authority: RCW 21.20.450. 83-19-036 (Order SDO-180-83), § 460-36A-175, filed 9/14/83.]

**WAC 460-36A-180 Appraisal.** The consideration paid for real property acquired by the REIT shall ordinarily be based on the fair market value of the property as determined by a majority of the trustees. In cases in which a majority of the independent trustees so determine, such fair market value shall be as determined by a qualified independent real estate appraiser selected by the independent trustees.

[Statutory Authority: RCW 21.20.450, 83-19-036 (Order SDO-180-83), § 460-36A-180, filed 9/14/83.]

**WAC 460-36A-185 Indemnification.** The trustees and adviser of the REIT shall be deemed to be in a fiduciary relationship to the public investors, and the prospectus or offering circular shall so state. Trustees and advisers shall not be exonerated from liability to investors for any losses caused by gross negligence or willful or wanton misconduct.

[Statutory Authority: RCW 21.20.450, 83-19-036 (Order SDO-180-83), § 460-36A-185, filed 9/14/83.]

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

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

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

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

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

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

(4) Issue redeemable equity securities.

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

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

outstanding shares of the REIT on the date of grant of any options or warrants.

(7) Invest more than one percent of its assets in real estate contracts of sale, unless such real estate contracts of sale are recordable in the chain of title.

[Statutory Authority: RCW 21.20.450, 83-19-036 (Order SDO-180-83), § 460-36A-190, filed 9/14/83.]

**WAC 460-36A-195 Implementation.** To provide an orderly implementation of the rules of this chapter 460-36A WAC any changes that need to be made in the declaration of trust of the REIT in order to comply with these rules may be made at the next regularly scheduled meeting of the shareholders of the REIT.

[Statutory Authority: RCW 21.20.450, 83-19-036 (Order SDO-180-83), § 460-36A-195, filed 9/14/83.]

## Chapter 460-40A WAC INVESTMENT COMPANIES

### WAC

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

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-40A-030	Management fee. [Order 304, § 460-40A-030, filed 2/28/75, effective 4/1/75.] Repealed by 79-09-028 (Order SD-57-79), filed 8/14/79. Statutory Authority: RCW 21.20.450.
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**WAC 460-40A-015 Prohibition on promotional shares.** No promotional shares, as defined in WAC 460-10A-050 of these rules, shall be issued in connection with the sale of securities of an investment company.

[Order 304, § 460-40A-015, filed 2/28/75, effective 4/1/75.]

**WAC 460-40A-020 Prohibition on options.** No option shall be issued by an open-end investment company; however, that this prohibition does not apply to short-term options issued to permit the reinvestment of dividends or distributions of capital gains.

[Order 304, § 460-40A-020, filed 2/28/75, effective 4/1/75.]

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

[Order 304, § 460-40A-025, filed 2/28/75, effective 4/1/75.]

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

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

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

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

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

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

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

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

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

(7) The securities shall be issued to the purchaser and the security certificates shall be delivered to him or such securities shall be issued and credited to his account or shares record with the investment company and a memorandum of such entry shall be delivered to him.

[Order 304, § 460-40A-040, filed 2/28/75, effective 4/1/75.]

### Chapter 460-42A WAC EXEMPT SECURITIES

#### WAC

460-42A-010	Employee plans.
460-42A-020	Government bonds payable from industrial or commercial enterprises.
460-42A-030	Exemption of securities pursuant to RCW 21.20.310(1).
460-42A-080	Blue chip exemption.
460-42A-081	Exchange and national market system exemption.
460-42A-085	International banks.

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

[Order SD-131-77, § 460-42A-010, filed 11/23/77.]

**WAC 460-42A-020 Government bonds payable from industrial or commercial enterprises.** The term "industrial or commercial enterprise" as employed in RCW 21.20.310(1) includes, but is not limited to, a private

profit or nonprofit hospital, health care facility, college, university or educational institution, single or multifamily mortgage loan program, port authority concessionaire, or manufacturing or service business.

[Statutory Authority: RCW 21.20.310(1) and 21.20.450. 89-21-031 (Order SDO-160-89), § 460-42A-020, filed 10/11/89, effective 11/11/89. Statutory Authority: RCW 21.20.450. 81-04-048 (Order SDO-15-81), § 460-42A-020, filed 2/3/81.]

**WAC 460-42A-030 Exemption of securities pursuant to RCW 21.20.310(1).** Any security which would otherwise be exempt from registration under RCW 21.20.310(1) except that it is payable from a nongovernmental industrial or commercial enterprise shall be exempt from registration if it meets the requirements of either subsection (1) or (2) of this section:

(1) The security receives a rating of "AA" or better from Standard and Poor's Corporation or an equivalent rating from *Moody's Investors Service, Inc.*; or

(2)(a) The security is issued to fund a single-family mortgage loan program established and operated by a state housing finance agency; and

(b) The security receives a rating of at least "A+" from Standard and Poor's Corporation or an equivalent rating from *Moody's Investors Service, Inc.*

[Statutory Authority: RCW 21.20.310(1) and 21.20.450. 89-17-080 (Order SDO-128-89), § 460-42A-030, filed 8/17/89, effective 9/17/89.]

**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.]

**WAC 460-42A-081 Exchange and national market system exemption.** (1) Any securities listed or designated, or approved for listing or designation upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ/NMS interdealer quotation system, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing is exempt under RCW 21.20.310(8), provided that the issuer must meet the minimum published criteria for listing or designation as adopted by the exchange or interdealer quotation system. The administrator may by order withdraw this exemption as to an exchange or interdealer quotation system or a particular security when necessary in the public interest for the protection of investors.

(2) For the purposes of nonissuer transactions only, any security listed or approved for listing upon notice of issuance on the NASDAQ/NMS interdealer quotation system, the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Spokane Stock Exchange or any other stock exchange registered with the federal securities and exchange commission and approved by the director; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing, is exempted under RCW 21.20.310(8).

[Statutory Authority: RCW 21.20.310(8) and 21.20.450. 89-21-032 (Order SDO-161-89), § 460-42A-081, filed 10/11/89, effective 11/11/89; 82-18-037 (Order SDO-100-82), § 460-42A-081, filed 8/27/82.]

**WAC 460-42A-085 International banks.** Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member is exempted under RCW 21.20.310(8).

[Statutory Authority: RCW 21.20.310(8) and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-42A-085, filed 3/19/80.]

## Chapter 460-44A WAC EXEMPT TRANSACTIONS

### WAC

460-44A-050	Isolated nonissuer transaction.
460-44A-075	Definition of real estate mortgages when "offered and sold as a unit."
460-44A-200	Exemption from registration for secondary transactions pursuant to RCW 21.20.320(15).
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-504 Exemption for limited offers and sales of securities not exceeding \$250,000 to not more than twenty purchasers.  
 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.  
 460-44A-508 Insignificant deviations from a term, condition, or requirement of WAC 460-44A-501 through 460-44A-506.

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

- 460-44A-010 Nonpublic offering exemption pursuant to RCW 21.20.320(1). [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-010, filed 3/19/80; Order SD-130-77, § 460-44A-010, filed 11/23/77; Order 342, § 460-44A-010, filed 9/29/75.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.  
 460-44A-020 Text of rule. [Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-020, filed 3/19/80; Order SD-130-77, § 460-44A-020, filed 11/23/77; Order 342, § 460-44A-020, filed 9/29/75.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.  
 460-44A-030 Selling expense limitations and suitability standards for nonpublic offerings. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-030, filed 3/19/80; Order SD-130-77, § 460-44A-030, filed 11/23/77; Order 342, § 460-44A-030, filed 9/29/75.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.  
 460-44A-040 Form of notification of claim of exemption and report of sales. [Order SD-130-77, § 460-44A-040, filed 11/23/77.] Repealed by 80-04-037 (Order SDO-37-80), filed 3/19/80. Statutory Authority: RCW 21.20.450.  
 460-44A-041 Form of notification of claim of exemption pursuant to WAC 460-44A-010 through 460-44A-041. [Statutory Authority: RCW 21.20.320 (1) and (9). 80-04-037 (Order SDO-37-80), § 460-44A-041, filed 3/19/80.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.  
 460-44A-045 Report of sales for offering under WAC 460-44A-020. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-045, filed 3/19/80.] Repealed by 82-21-031 (Order SDO-98-82), filed 10/15/82. Statutory Authority: RCW 21.20.320(1) and 21.20.450.  
 460-44A-060 Limited offering exemption pursuant to RCW 21.20.320(9). [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-060, filed 3/19/80; Order SD-130-77, § 460-44A-060, filed 11/23/77.] Repealed by 90-09-059, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11).  
 460-44A-065 Notification of claim of exemption pursuant to WAC 460-44A-060. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-065, filed 3/19/80.] Repealed by 90-09-059, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11).  
 460-44A-070 Report of sales for offering under WAC 460-44A-060. [Statutory Authority: RCW 21.20.320 (1) and (9), and 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-070, filed 3/19/80.] Repealed by 90-09-

059, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11).

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

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

(2) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to brokers' transactions in accordance with section 4(4) of the Securities Act of 1933 and Rule 144 thereunder.

[Order SD-130-77, § 460-44A-050, filed 11/23/77.]

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

[Statutory Authority: RCW 21.20.450. 80-04-037 (Order SDO-37-80), § 460-44A-075, filed 3/19/80.]

**WAC 460-44A-200 Exemption from registration for secondary transactions pursuant to RCW 21.20.320(15).** The term "securities previously sold and distributed to the public" as used in RCW 21.20.320(15) shall not include securities sold and distributed pursuant to Securities and Exchange Commission Regulation D that have not been registered with the securities administrator of this state pursuant to the Securities Act of Washington. The administrator finds that in enacting RCW 21.20.320(15) the legislature did not contemplate the exemption of offers and sales of securities in the state of Washington that have been reviewed by neither the Securities and Exchange Commission nor the securities administrator of this state.

[Statutory Authority: RCW 21.20.450 and 21.20.320(15). 86-15-023 (Order SDO-89-86), § 460-44A-200, filed 7/14/86.]

**WAC 460-44A-500 Preliminary notes.** (1) The rules of WAC 460-44A-501 through 460-44A-508 relate to transactions exempted from the registration requirements of the Federal Securities Act of 1933 and RCW 21.20.140. WAC 460-44A-504 is an exemption from registration for offerings exempted under Securities and Exchange Commission Rule 504 or Rule 147. 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 federal and state 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 exemption of WAC 460-44A-504, 460-44A-505, or 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-508, 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 the adoption 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-508, issuers may opt to follow the rules in effect at the date of filing notice of the offering.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-500, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-500, filed 8/17/89, effective 9/17/89; 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-508, 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; any insurance company as defined in section 2(13) of the Securities Act of 1933; any 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; any 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; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any 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. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. 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. Such valuations of noncash consideration must be reasonable at the time made;

(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-504, 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 (ii) 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-508, except to the extent provided in (a) of this subsection.

(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 a reasonable time prior to the sale of securities to that purchaser 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 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-501, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-501, filed 8/17/89, effective 9/17/89; 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-504, 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.

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 such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the antifraud provisions of the federal and state securities laws.

(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, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser 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 (2)(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, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser 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 that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505 or 460-44A-506, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time 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.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505 or 460-44A-506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(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 WAC 460-44A-501 through 460-44A-508 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 may be demonstrated by 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 (1989).

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-502, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-502, filed 8/17/89, effective 9/17/89; 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) An issuer offering or selling securities in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall file with the administrator of securities of the department of licensing a notice and pay a filing fee as follows:

(a)(i)(A) For an offering in reliance on Securities and Exchange Commission Rule 505 or Rule 506, under WAC 460-44A-505 or 460-44A-506, respectively, the issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 505 (and box ULOE) or box 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 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;

(B) For an offering in reliance on Securities and Exchange Commission Rule 504, under WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D checking box 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to 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-504;

(C) For an offering in reliance on Securities and Exchange Commission Rule 147, under WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to 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-504;

(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-504, 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 initial 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 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-503, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-503, filed 8/17/89, effective 9/17/89; 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-504 Exemption for limited offers and sales of securities not exceeding \$250,000 to not more than twenty purchasers.** (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825 or in compliance with the Securities Act of 1933, Rule 230.147 as made effective in Release No. 33-5450 that satisfy the conditions in subsections (2) and (3) of this section shall be exempt under RCW 21.20.320(9).

(2) General conditions to be met. 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 and 460-44A-508.

(3) Specific conditions to be met.

(a) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this section, as defined in WAC 460-44A-501(3), shall not exceed \$250,000, within or without this state, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under RCW 21.20.320(9) or sections 3(a) (11) or 3(b) of the Securities Act of 1933 or in violation

of RCW 21.20.140 or section 5(a) of the Securities Act of 1933.

(b) No commissions. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in the state of Washington.

(c) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than twenty purchasers of securities in this state from the issuer in any offering in reliance on this section.

(d) 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.

(e) Disqualifications. No exemption under this section shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.252, sections (c), (d), (e), or (f) is disqualified for any of the reasons listed in WAC 460-44A-505 (2)(d) unless inapplicable or waived as set forth in WAC 460-44A-505 (2)(d)(vi) and (vii).

(f) Notice filing. 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.

(g) Advice about the limitations on resale.

The issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in WAC 460-44A-502 (4)(b).

(4) 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.

Note 1: WAC 460-44A-504 is not the exclusive method by which issuers may make offerings under Securities and Exchange Commission Rules 504 and 147. For example, offers and sales of an issuer in compliance with Securities and Exchange Commission Rule 504 or Rule 147 may also be registered by qualification under chapter 21.20 RCW. An issuer that qualifies may elect to register an offering pursuant to the Uniform Limited Offering Registration as set out in chapter 460-17A WAC. An issuer may also elect to claim the corporate limited offering exemption as set out in chapter 460-46A WAC.

Note 2: Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010. RCW 21.20.010(2) renders it unlawful "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . ." In addition, issuers must otherwise comply with the antifraud provisions of the federal and state securities laws. No format for disclosure is prescribed. However, issuers may wish to consider the question and answer disclosure format of Form ULOR-C of chapter 460-17A WAC, or the corporate limited offering exemption of chapter 460-46A WAC, in determining the disclosure they make. If either form is used, the issuer should indicate that the disclosure form is being used for an exempt offering under this section rather than in an offering under the chapters under which the form was adopted.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-504, filed 4/17/90, effective 5/18/90.]

**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; 230.505; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825 that satisfy the conditions in subsection (2) of this section shall be exempt transactions under RCW 21.20.320(17).

(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.

(viii) It is a defense to a violation of this paragraph (d) if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(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 (1) and (16) and 21.20.450.89-17-076 (Order SDO-122-89), § 460-44A-505, filed 8/17/89, effective 9/17/89. 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; 230.506; and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825 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, depositories, and engineers and other experts, expenses of qualification of the sale of the securities under federal and state laws, including taxes and fees, and any other expenses actually incurred by the issuer and directly related to the offering and sale of the securities, but excluding accountants' and the issuer's attorneys' fees and options to underwriters.

(B) The number of shares or units called for by options issuable to underwriters or other persons as compensation, in whole or in part, for the offer or sale of securities in reliance on this 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. 89-17-076 (Order SDO-122-89), § 460-44A-506, filed 8/17/89, effective 9/17/89; 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.]

**WAC 460-44A-508 Insignificant deviations from a term, condition, or requirement of WAC 460-44A-501 through 460-44A-506.** (1) A failure to comply with a term, condition, or requirement of WAC 460-44A-504, 460-44A-505, or 460-44A-506 will not result in the loss of the exemption from the registration requirements of RCW 21.20.140 for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(a) The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(b) The failure to comply was insignificant with respect to the offering as a whole: *Provided*, That any failure to comply with WAC 460-44A-502(3), 460-44A-503, 460-44A-504 (3)(a), (c), and (e), 460-44A-505 (2)(d) and (e) and (3), 460-44A-506 (3) and (4), paragraph (c) of Securities and Exchange Commission Rule 502, paragraphs (b)(2)(i) and (ii) of Securities and Exchange Commission Rule 505 and paragraph (b)(2)(i) of Securities and Exchange Commission Rule 506 shall be deemed to be significant to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of WAC 460-44A-504, 460-44A-505, or 460-44A-506.

(2) A transaction made in reliance on WAC 460-44A-504, 460-44A-505, or 460-44A-506 shall comply with all applicable terms, conditions, and requirements of WAC 460-44A-501 through 460-44A-506. Where an exemption is established only through reliance upon subsection (1) of this section, the failure to comply shall nonetheless be actionable by the securities administrator under chapter 21.20 RCW.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-44A-508, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320 (1) and (16) and 21.20.450. 89-17-076 (Order SDO-122-89), § 460-44A-508, filed 8/17/89, effective 9/17/89.]

## Chapter 460-46A WAC

### CORPORATE LIMITED OFFERING EXEMPTION

#### WAC

460-46A-010	Corporate limited offering exemption—Conditions to be met.
460-46A-020	Availability of exemption.
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460-46A-165	Annual reports to stockholders.

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

460-46A-060	Promoter—Definition. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-060, filed 10/5/82.] Repealed by 89-07-042 (Order SDO-035-89), filed
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- 3/13/89. Statutory Authority: RCW 21.20.320(9) and 21.20.450.
- 460-46A-070 Cheap and promotional shares—Definition. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-070, filed 10/5/82.] Repealed by 89-07-042 (Order SDO-035-89), filed 3/13/89. Statutory Authority: RCW 21.20.320(9) and 21.20.450.
- 460-46A-080 Stock options. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 83-15-025 (Order SDO-95-83), § 460-46A-080, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-080, filed 10/5/82.] Repealed by 89-07-042 (Order SDO-035-89), filed 3/13/89. Statutory Authority: RCW 21.20.320(9) and 21.20.450.
- 460-46A-085 Inapplicability of cheap and promotional share, and stock option, restrictions. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 83-15-025 (Order SDO-95-83), § 460-46A-085, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-085, filed 10/5/82.] Repealed by 89-07-042 (Order SDO-035-89), filed 3/13/89. Statutory Authority: RCW 21.20.320(9) and 21.20.450.
- 460-46A-120 Startup management compensation prohibited. [Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-120, filed 10/5/82.] Repealed by 89-07-042 (Order SDO-035-89), filed 3/13/89. Statutory Authority: RCW 21.20.320(9) and 21.20.450.

**WAC 460-46A-010 Corporate limited offering exemption—Conditions to be met.** Transactions involving the offer and sale of securities made in accordance with all the conditions set forth in this chapter shall be exempted from registration under RCW 21.20.320(9). For offerings commenced but not completed prior to the amendment of this chapter, issuers may opt to follow the rules in effect at the date of commencement of the offering.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-010, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450. 89-07-042 (Order SDO-035-89), § 460-46A-010, filed 3/13/89; 82-20-068 (Order SDO-116-82), § 460-46A-010, filed 10/5/82.]

**WAC 460-46A-020 Availability of exemption.** Only corporations may use the corporate limited offering exemption. The corporate limited offering exemption may be used by an issuer more than once provided that the aggregate amount raised by all offerings by the issuer and its affiliates under the corporate limited offering exemption shall not exceed \$500,000. (The foregoing notwithstanding, offerings by affiliates of the issuer under the corporate limited offering exemption with respect to business ventures unrelated to that of the issuer occurring twenty-four months prior to or twenty-four months after the offering of the issuer under consideration shall not be included in calculating the \$500,000 limitation as to the issuer.) The corporate limited offering exemption is available only if one class of stock is outstanding after the offering provided however, that upon written request, this requirement may be waived by the administrator as not being necessary under the circumstances for the protection of investors. The corporate limited offering exemption may not be used for the offer and sale of debt securities. The corporate limited offering exemption is not available if the issuer or its affiliates have previously

sold securities of such issuer or affiliate under the provisions of RCW 21.20.210 (registration by qualification) or RCW 21.20.180 (registration by coordination) or of similar provisions of the securities or blue sky laws of any other state. If an issuer has previously filed an application for registration of its securities in this or any state but no sales were made pursuant to that registration, the corporate limited offering exemption remains available, but the issuer must advise the securities division of its prior applications for registration. The securities division may require disclosure of the reasons why no sales were made pursuant to the prior registration applications. The total amount of funds raised by the issuer and its affiliates under all exemptions, including the corporate limited offering exemption, but excepting the statutory nonpublic offering exemption of RCW 21.20.320(1), may not exceed \$500,000 in any 12-month period during which the corporate limited offering exemption is used.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-020, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450. 86-18-012 (Order SDO-114-86), § 460-46A-020, filed 8/22/86; 83-15-025 (Order SDO-95-83), § 460-46A-020, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-020, filed 10/5/82.]

**WAC 460-46A-025 No sales commission.** No commission or other remuneration may be paid directly or indirectly for offering or making sales of shares under the corporate limited offering exemption.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-025, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-025, filed 10/5/82.]

**WAC 460-46A-030 Affiliate—Definition.** "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified. For example, corporations with common principal owners or executive management are "affiliates."

[Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-030, filed 10/5/82.]

**WAC 460-46A-040 Maximum number of purchasers under exemption.** The maximum number of purchasers under the corporate 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 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-040, filed 4/17/90, effective 5/18/90. 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.]

**WAC 460-46A-050 Promotional shares.** The promotional shares rules set forth in WAC 460-16A-101,

460-16A-102, 460-16A-104 through 460-16A-106, and 460-16A-109 shall apply except that 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.

[Statutory Authority: RCW 21.20.320(9) and 21.20.450. 89-07-042 (Order SDO-035-89), § 460-46A-050, filed 3/13/89; 82-20-068 (Order SDO-116-82), § 460-46A-050, filed 10/5/82.]

**WAC 460-46A-090 Disclosure document.** Each offeree under the corporate limited offering exemption must be furnished a disclosure document on a form provided by the securities administrator. A copy of such disclosure document with all attachments must be furnished to prospective purchasers twenty-four hours before either agreeing to purchase the shares or making any payment of consideration, whichever is earlier. A manually signed copy of the disclosure document and an additional copy must be filed with the securities administrator at least fifteen business days prior to commencement of the offering. If the financial statements attached to the disclosure document are audited, reviewed or compiled by an accountant, the written consent of the accountant to inclusion in the disclosure document of the accountant's report shall be filed with the securities administrator. If during the course of an offering made under the corporate limited offering exemption there shall occur an event which would materially affect the issuer, its prospects or properties, or otherwise materially affect the accuracy or completeness of the information contained in the disclosure document, the disclosure document shall be promptly revised to reflect such event, filed with the securities administrator as so revised, and used for all sales of shares in the offering thereafter.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-090, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450. 89-07-042 (Order SDO-035-89), § 460-46A-090, filed 3/13/89; 86-18-012 (Order SDO-114-86), § 460-46A-090, filed 8/22/86; 83-15-025 (Order SDO-95-83), § 460-46A-090, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-090, filed 10/5/82.]

**WAC 460-46A-091 Advertisements.** Advertisements and announcements may be used to solicit investors upon effectiveness of the exemption. Advertisements and announcements not meeting the requirements of WAC 460-28A-025 must be filed with the administrator at least five business days prior to use.

[Statutory Authority: RCW 21.20.320(9) and 21.20.450. 83-15-025 (Order SDO-95-83), § 460-46A-091, filed 7/15/83.]

**WAC 460-46A-092 Financial statements.** (1) The issuer must file with the administrator financial statements prepared in accordance with generally accepted accounting principles, unless otherwise allowed by the administrator. The financial statements shall be attached to Form LOE-82.

(2) The financial statements required by this section shall consist of the following:

(a) A balance sheet as of the end of the issuer's most recent fiscal year and a balance sheet within one hundred twenty days from the date of Form LOE-82; and

(b) A statement of profit and loss for the issuer's last two fiscal years and for the interim period from the end of the issuer's last fiscal year to a date within one hundred twenty days from the date of Form LOE-82. If the issuer has not conducted significant operations, the issuer must submit a statement of revenues and disbursements from the inception of the corporation to the most recent practicable date.

(3) If the financial statements required by this section are audited, reviewed or compiled, the report of the certified public accountant shall be attached to the financial statements. If the financial statements are not audited, reviewed or compiled, the issuer shall attach to the financial statements a statement signed by the corporation's chief financial officer that the financial statements submitted fairly state the corporation's financial position and results of operations, or receipts and disbursements, as of the dates indicated, all in accordance with generally accepted accounting principles consistently applied and including all adjustments necessary for fair presentation under the circumstances.

[Statutory Authority: RCW 21.20.320(9) and 21.20.450. 89-07-042 (Order SDO-035-89), § 460-46A-092, filed 3/13/89.]

**WAC 460-46A-095 Price of shares.** All shares sold pursuant to the corporate limited offering exemption must be sold for cash, must be of the same class, and must be offered and sold at the same price. Where good cause is shown the administrator may, in writing, waive the provisions of this section.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-095, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450. 89-07-042 (Order SDO-035-89), § 460-46A-095, filed 3/13/89; 83-15-025 (Order SDO-95-83), § 460-46A-095, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-095, filed 10/5/82.]

**WAC 460-46A-100 Time purchase of shares under corporate limited offering exemption.** The terms of the subscription of purchase for all shares sold under the corporate limited offering exemption must provide that such shares shall be fully paid for within ninety days of the date of subscription.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-100, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450. 82-20-068 (Order SDO-116-82), § 460-46A-100, filed 10/5/82.]

**WAC 460-46A-105 Maximum and minimum offering amounts.** The issuer must specify the minimum amount of funds necessary to achieve the results anticipated in the disclosure document required under WAC 460-46A-090, and, unless the administrator finds a higher minimum amount is necessary, this shall be the minimum amount of funds to be raised under an offering under the corporate limited offering exemption. The issuer must also establish a maximum amount of funds to be so raised.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-105, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 89-07-042 (Order SDO-035-89), § 460-46A-105, filed 3/13/89; 82-20-068 (Order SDO-116-82), § 460-46A-105, filed 10/5/82.]

**WAC 460-46A-110 Monies to be deposited in escrow account—Period of escrow and of offering.** The issuer must establish a separate escrow account with a bank acting as escrow agent for all funds received for sales of securities under the corporate limited offering exemption until at least the minimum amount has been raised. If the minimum amount is not raised within twelve months of the date of effectiveness of the offering, then all funds, including any interest thereon, shall be promptly returned to the investors. In any event, the offering period may not exceed twelve months from the date of effectiveness of the offering.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-110, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 89-07-042 (Order SDO-035-89), § 460-46A-110, filed 3/13/89; 82-20-068 (Order SDO-116-82), § 460-46A-110, filed 10/5/82.]

**WAC 460-46A-115 Report of sales.** The issuer must file a report of sales on a form prescribed by the administrator no later than thirty days after the expiration of the offering.

[Statutory Authority: RCW 21.20.320(9) and 21.20.450, 86-18-012 (Order SDO-114-86), § 460-46A-115, filed 8/22/86.]

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

"These shares are not registered under the Securities Act of Washington and may not be offered, or sold, pledged (except a pledge pursuant to the terms of which any offer or sale upon foreclosure would be made in a manner that would not violate the registration provisions of the Securities Act of Washington) or otherwise distributed for value, unless registered under the act or unless an exemption from registration is available."

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-145, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 89-07-042 (Order SDO-035-89), § 460-46A-145, filed 3/13/89; 82-20-068 (Order SDO-116-82), § 460-46A-145, filed 10/5/82.]

**WAC 460-46A-150 Suitability of investors.** In all sales to investors in this state under the corporate limited offering exemption 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, 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.

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[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-150, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 89-07-042 (Order SDO-035-89), § 460-46A-150, filed 3/13/89; 86-18-012 (Order SDO-114-86), § 460-46A-150, filed 8/22/86; 82-20-068 (Order SDO-116-82), § 460-46A-150, filed 10/5/82.]

**WAC 460-46A-155 Attorney's opinion.** In order for the corporate limited offering exemption to be available, an attorney, who is a member in good standing of a state bar association, must submit an opinion to the administrator that the shares to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-155, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 89-07-042 (Order SDO-035-89), § 460-46A-155, filed 3/13/89; 83-15-025 (Order SDO-95-83), § 460-46A-155, filed 7/15/83; 82-20-068 (Order SDO-116-82), § 460-46A-155, filed 10/5/82.]

**WAC 460-46A-160 Signing and verification of information in disclosure document.** All directors and the chief executive and accounting officers of the issuer shall sign the disclosure form under WAC 460-46A-090 and by such action shall certify that they each have made reasonable efforts to verify the material accuracy and completeness of the information therein contained. In order for this corporate limited offering exemption to be available, the chief executive and accounting officers of the issuer shall make themselves and the issuer's books and records available to each investor to respond to questions and otherwise verify the information contained in the disclosure document prior to the investment by such investor.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-160, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 82-20-068 (Order SDO-116-82), § 460-46A-160, filed 10/5/82.]

**WAC 460-46A-165 Annual reports to stockholders.** Issuers using the corporate limited offering exemption shall thereby undertake to investors in the corporate limited offering to annually provide for 5 years thereafter written financial reports containing a balance sheet as of the end of the issuer's fiscal year and a statement of profits and losses for said fiscal year, all prepared in accordance with generally accepted accounting principles.

[Statutory Authority: RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.340(11). 90-09-059, § 460-46A-165, filed 4/17/90, effective 5/18/90. Statutory Authority: RCW 21.20.320(9) and 21.20.450, 82-20-068 (Order SDO-116-82), § 460-46A-165, filed 10/5/82.]

## Chapter 460-52A WAC NONPROFIT ORGANIZATIONS

### WAC

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



460-52A-060 Duration of offering.

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

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

**WAC 460-52A-010 Definitions.** Nonprofit organization means any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States.

[Order SD-131-77, § 460-52A-010, filed 11/23/77; Order 344, § 460-52A-010, filed 10/24/75.]

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

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

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

(3) Testamentary dispositions.

(4) Voluntary inter vivos trusts.

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

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

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

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

(iv) Pooled income funds as described in Section 646(c)(5) of the Internal Revenue Code.

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

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

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

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

(c) This section does not create any presumption that a trust arrangement not conforming to this section is not an inter vivos trust.

[Order 344, § 460-52A-020, filed 10/24/75.]

(1990 Ed.)

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

[Order SD-131-77, § 460-52A-030, filed 11/23/77; Order 344, § 460-52A-030, filed 10/24/75.]

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

(1) Name and address of the issuer;

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

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

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

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

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

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

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

(c) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

[Order SD-131-77, § 460-52A-040, filed 11/23/77; Order 344, § 460-52A-040, filed 10/24/75.]

**WAC 460-52A-050 Filing fee.** Every nonprofit organization which files notice of exemption of securities shall pay a filing fee of fifty dollars.

[Order SD-131-77, § 460-52A-050, filed 11/23/77; Order 344, § 460-52A-050, filed 10/24/75.]

**WAC 460-52A-060 Duration of offering.** No offering shall extend for more than two years after the date of filing notification of claim of exemption pursuant to RCW 21.20.310(11) without the express authorization of the administrator.

[Order SD-131-77, § 460-52A-060, filed 11/23/77.]

## Chapter 460-60A WAC

FINANCIAL STATEMENTS AND REPORTS—  
CONTENTS AND FILING REQUIREMENTS

## WAC

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

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

(2) The administrator may require the filing of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any issuer or person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

[Statutory Authority: RCW 21.20.210(14), 79-09-028 (Order SD-57-79), § 460-60A-010, filed 8/14/79; Order 304, § 460-60A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

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

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

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

(2) For offerings over \$500,000.00 and filed pursuant to RCW 21.20.210 the annual financial statements must be audited. For specific requirements not contained in these rules refer to RCW 21.20.210(14).

[Statutory Authority: RCW 21.20.210(14), 79-09-028 (Order SD-57-79), § 460-60A-020, filed 8/14/79; Order 304, § 460-60A-020, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

**WAC 460-60A-025 Quarterly reports required of certain issuers.** Quarterly reports will be submitted by all issuers who register by qualification and by those issuers

who are filing pursuant to the Regulation A Exemption of the Federal Security Act. Copies of quarterly report forms are available upon request. Such reports are required only during the term of the offering.

[Order 304, § 460-60A-025, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

**WAC 460-60A-035 Quarterly reports—When to file.** Quarterly reports will be filed on a quarterly basis, said quarters to be based upon the issuer's fiscal year. The quarterly reports shall be filed with the division within thirty calendar days from the end of each quarterly period.

[Order SD-131-77, § 460-60A-035, filed 11/23/77; Order 304, § 460-60A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

**WAC 460-60A-040 Reports after termination of public offerings.** All issuers must file annual reports with the division even after termination of the public securities offering if they are within the criteria set out in RCW 21.20.740.

[Order 304, § 460-60A-040, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

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

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

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

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

(d) Those whose total assets are less than \$500,000 at the close of their fiscal year.

[Order 304, § 460-60A-045, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

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

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

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

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

(3) Should the director find that the financial statements required in subsection (1) do not adequately provide the necessary business and financial information by the said issuer he may by order direct the issuer to file such additional information as is deemed necessary. Said additional information does not have to be filed within

the 120 day period after the issuer's fiscal year end but must be filed within a reasonable time after the director issues his order.

[Order 304, § 460-60A-050, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

**WAC 460-60A-055 Reports maintained--Time period required.** The reports required by WAC 460-60A-050 will be maintained by the director for public inspection for a period of five years after the receipt of said reports.

[Order 304, § 460-60A-055, filed 2/28/75, effective 4/1/75. Formerly chapter 460-60 WAC.]

**Chapter 460-64A WAC  
CAPITAL REQUIREMENTS--DEFINITIONS**

- WAC
- 460-64A-010 Definitions.
- 460-64A-020 Capital requirements.

**WAC 460-64A-010 Definitions.** 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 460-65A WAC  
REGULATIONS ON PROCEDURES RELATED TO  
THE ENTRY OF ORDERS**

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

**WAC 460-65A-010 Grounds for issuance of stop order pursuant to RCW 21.20.200.** The securities administrator may issue a stop order pursuant to RCW

21.20.200 if the securities division does not receive the required notification and post-effective amendment with respect to prior amendment referred to in RCW 21.20.190, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with RCW 21.20.190, if the administrator finds the entry of the order to be in the public interest and necessary for the protection of investors.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-010, filed 1/13/83.]

**WAC 460-65A-020 Grounds for issuance of cease and desist orders pursuant to RCW 21.20.390.** The securities administrator may issue pursuant to RCW 21.20.390 an order directing any person to cease and desist from continuing an act or practice if it appears that the act or practice by the person is in violation of any provision of the Washington Securities Act or any lawfully promulgated under the Securities Act and if the securities administrator finds the entry of the order to be in the public interest and necessary for the protection of investors.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-020, filed 1/13/83.]

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

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

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

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

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

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

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

(7) The issuer or any affiliate is the subject of an active investigation of the securities division of the state of Washington for violation of the Securities Act of Washington or violation of any rule, order, or condition

lawfully imposed under that act: *Provided*, That, an order entered under this provision shall not remain in effect for an unreasonable period of time;

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

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

If the securities administrator finds the order to be in the public interest and necessary for the protection of investors.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-030, filed 1/13/83.]

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

(1) A violation of RCW 21.20.010 in connection with the offering or sale and if the securities administrator finds entry of the order to be in the public interest and necessary for the protection of investors.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-040, filed 1/13/83.]

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

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

(a) If entry of the summary order results in,

(i) Denial of an exemption under RCW 21.20.320(1), 21.20.320(9), or 21.20.325;

(ii) Denial of registration under RCW 21.20.110;

(iii) A stop order under RCW 21.20.110; or

(iv) A stop order denying effectiveness to registration under RCW 21.20.280;

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

(b) If entry of the summary order results in,

(i) Suspension of registration under RCW 21.20.110;

(ii) A stop order under RCW 21.20.280 suspending or revoking registration of securities;

(iii) A cease and desist order issued under RCW 21.20.290;

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

The provisions of WAC 460-65A-110 shall apply.

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

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**WAC 460-65A-105 Summary order—Hearing.** If entry of the summary order results in any of the consequences listed at WAC 460-65A-100 (2)(a), the hearing shall be held within a reasonable time and in accordance with chapter 34.04 RCW.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-105, filed 1/13/83.]

**WAC 460-65A-110 Summary hearing—Appearance before the director.** If entry of the summary order results in any of the consequences listed at WAC 460-65A-100 (2)(b), the subject of the order shall have an opportunity to appear before the director or the securities administrator. Such a hearing shall be held reasonably promptly. If the director or securities administrator finds that good cause is shown, he or she shall vacate the summary order. If he or she finds that good cause is not shown, the summary order shall remain in effect and the director shall give notice of opportunity for hearing which shall be held within a reasonable time.

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

**WAC 460-65A-115 Requests for hearing on summary order time limits.** If the subject of a summary order does not request a hearing within fifteen days after receipt of notice of opportunity for hearing, the order shall become final.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-115, filed 1/13/83.]

**WAC 460-65A-125 Nonsummary procedure.** Upon entry of any nonsummary order under the Securities Act, the hearing shall be held within a reasonable time and in accordance with chapter 34.04 RCW.

[Statutory Authority: RCW 21.20.450, 21.20.200, 21.20.390 and 21.20.325. 83-03-024 (Order SDO-6-83), § 460-65A-125, filed 1/13/83.]

## Chapter 460-70 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

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(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

460-80-100	Notice of claim for exemption.
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460-80-450	Release of impounds.
460-80-500	Advertising.

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

460-80-120	Subfranchisor registration application. [Order 11, § 460-80-120, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.
460-80-130	Franchise registration exhibits. [Order 11, § 460-80-130, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.040 (4), (7), and (20), 19.100.070(2), and 19.100.250.
460-80-150	Number of franchises. [Order 11, § 460-80-150, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-

80), filed 3/19/80. Statutory Authority: RCW 19.100.040(20) and 19.100.250.

460-80-170 Signing of application. [Order 11, § 460-80-170, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.

460-80-180 Consent to service of process. [Order 11, § 460-80-180, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.160 and 19.100.250.

460-80-200 Renewal of franchise registration. [Order 11, § 460-80-200, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.070(2).

460-80-210 Underscoring of changes. [Order 11, § 460-80-210, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.070(2) and 19.100.250.

460-80-220 Application to amend registration. [Order 11, § 460-80-220, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.

460-80-320 Required information in offering circular. [Order 11, § 460-80-320, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.040 (4), (7), and (20), 19.100.070(2), and 19.100.250.

460-80-330 Sequence of presentation in offering circular. [Order 11, § 460-80-330, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.250.

460-80-900 Registration renewal application. [Order 11, § 460-80-900, filed 3/3/72.] Repealed By 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.070(2) and 19.100.250.

460-80-910 Sale of franchises—Power of attorney for consent to service. [Order 11, § 460-80-910, filed 3/3/72.] Repealed by 80-04-036 (Order SDO-38-80), filed 3/19/80. Statutory Authority: RCW 19.100.160 and 19.100.250.

#### WAC 460-80-100 Notice of claim for exemption.

Any franchisor or subfranchisor who claims an exemption under RCW 19.100.030 (4)(a) and (b)(i) shall file with the administrator of the state securities division a statement giving notice of such claim for exemption, the name and address of the franchisor or subfranchisor, the name under which the franchisor or subfranchisor is doing business, and a statement setting forth the information upon which the exemption under RCW 19.100.030 (4)(b)(i) is claimed, including the most recent audited financial statement showing compliance with the requirements of RCW 19.100.030 (4)(b)(i)(A).

[Order 11, § 460-80-100, filed 3/3/72.]

#### WAC 460-80-110 Franchise registration application.

All applications for registration, renewal or amendment of a franchise shall have as the first page thereof a facing page in the form as provided by the department of licensing and containing the information specified therein. The application for registration, renewal or amendment must be accompanied by the fee prescribed in RCW 19.100.240 made payable by check to the treasurer of the state of Washington.

[Statutory Authority: RCW 19.100.040(12), 19.100.070(2) and 19.100.250. 80-04-036 (Order SDO-38-80), § 460-80-110, filed 3/19/80; Order 11, § 460-80-110, filed 3/3/72.]

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

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

- (a) Facing page;
- (b) Supplemental information page(s);
- (c) Salesperson registration application in the form prescribed by WAC 460-82-100;

(d) A copy of the proposed offering circular.

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

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

(c) A consent to service of process in the form prescribed by the department of licensing.

(3) Definitions:

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

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

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

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

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

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

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

(9) Underscoring of changes: If the registration renewal statement or any amendment to an application for registration alters the text of the offering circular, or of any item, or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

[Statutory Authority: RCW 19.100.250, 80-04-036 (Order SDO-38-80), § 460-80-125, filed 3/19/80.]

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

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

(c) The use of unaudited financial statements as provided in these rules does not relieve the applicant or any person from any liability for false and misleading statements contained in such financial statements.

[Statutory Authority: RCW 19.100.040(7) and 19.100.250, 80-04-036 (Order SDO-38-80), § 460-80-140, filed 3/19/80; Order 11, § 460-80-140, filed 3/3/72.]

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

## SPECIMEN CROSS REFERENCE SHEET

Item Number of Application	Page in Offering Circular	Page in Franchise Agreement
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[Order 11, § 460-80-160, filed 3/3/72.]

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

[Order 11, § 460-80-190, filed 3/3/72.]

**WAC 460-80-195 Approval is not an endorsement.** The filing of the application for registration or the effectiveness of the registration does not constitute a finding by the director that any document filed under this act is true, complete and not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the director has passed in any way upon the merits or qualification of, or recommended or given approval to any person, franchise or transaction.

[Order 11, § 460-80-195, filed 3/3/72.]

**WAC 460-80-300 Receipt of offering circular.** Each prospective purchaser of a franchise shall sign a receipt in substantially the following form that they have received the offering circular and that they received the same before signing the receipt and completing the sale.

ACKNOWLEDGEMENT OF RECEIPT OF OFFERING CIRCULAR BY PROSPECTIVE FRANCHISEE FROM  
(NAME OF FRANCHISOR)

The undersigned, personally and/or as an officer or partner of the proposed franchisee, does hereby acknowledge receipt of "the franchise offering circular for prospective franchisees required by the state of Washington" including all exhibits attached thereto, to-wit: (List exhibits to be attached, including, but not limited to, financial statements, franchise agreement, lease agreements, etc.) I acknowledge that I received the offering circular at least 48 hours prior to signing this receipt and completing the sale.

(1990 Ed.)

Dated: \_\_\_\_\_

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

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

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

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

(b) Each offering circular should contain a reasonable detailed table of contents showing the subject matter of the various sections or subdivisions of the offering circular and the page number on which each section or subdivision begins.

[Order 11, § 460-80-310, filed 3/3/72.]

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

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

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

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

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

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

A brief description of the franchise to be offered.

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

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

The following statement in boldface type:

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

[Title 460 WAC—p 117]

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 and which is relevant to their use in this state or the state in which the franchise business is to be located.

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

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

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

(14) Patents and copyrights: If the franchisor owns any rights in or to any patents or copyrights which are material to the franchise, describe such patents and copyrights, their relationship to the franchise and the



terms and conditions under which the franchisee may use them, including their duration, whether the franchisor can and intends to renew any copyrights, and, to the extent relevant, the information required by Section 15 above with respect to such patents and copyrights.

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

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

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

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

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

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

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

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

(f) The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor and the obligations of the franchisee (including lease or sublease obligations) after termination of the franchise by the franchisee or the expiration of the franchise.

(g) The franchisee's interest upon termination or refusal to renew or extend the franchise by the franchisor or by the franchisee.

(h) The conditions under which the franchisor may repurchase, whether by right of first refusal or at the opinion of the franchisor. If the franchisor has the option to repurchase the franchise, state whether there will be an independent appraisal of the franchise, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the franchisee.

(i) The conditions under which the franchisee or its owners may sell or assign all or an interest in the ownership of the franchise or of the franchisee or in the assets of the franchise business.

(j) The conditions under which the franchisor may sell or assign in whole or in part.

(k) The conditions under which the franchisee may modify.

(l) The conditions under which the franchisor may modify.

(m) The rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee.

(n) The provisions of any covenant not to compete.

(18) Arrangements with public figures: State the following:

(a) Any compensation or other benefit given or promised to a public figure arising, in whole or in part, from:

(i) The use of the public figure in the name or symbol of the franchise, or

(ii) The endorsement or recommendation of the franchise by the public figure in advertisements.

(b) Any right the franchisee may have to use the name of a public figure in his promotional efforts or advertising and any charges to be made to the franchisee in connection with such usage.

(c) The extent to which such public figure is involved in the actual management or control of the franchisor.

(d) The total involvement of the public figure in the franchise operation.

(19)(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.]

**WAC 460-80-400 Impounds.** The director may, by rule or order, require as a condition to the effectiveness of the registration the impound of franchise fees if he finds that such requirement is appropriate to protect the prospective franchisee.

[Order 11, § 460-80-400, filed 3/3/72.]

**WAC 460-80-410 Imposition of impound.** In a case where the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the director or administrator may impose as a condition to the registration of a franchise offering an impoundment of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

[Order 11, § 460-80-410, filed 3/3/72.]

**WAC 460-80-420 Operation of impound condition.** When an impound condition is imposed in connection

with the registration of a franchise offering, one hundred percent of franchisee fees and all other funds paid by the franchisees or subfranchisors for any purpose shall within 48 hours of the receipt of such funds, be placed with the depository until the director takes further action pursuant to WAC 460-80-450.

All checks shall be made payable to the depository.

[Order 11, § 460-80-420, filed 3/3/72.]

**WAC 460-80-430 Purchase receipts.** When an impound condition is imposed, the franchisor shall deliver to each franchisee or subfranchisor, a purchase receipt, in a form approved by the director. Such purchase receipts shall be consecutively numbered and prepared in triplicate and the original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy to the franchisor.

[Order 11, § 460-80-430, filed 3/3/72.]

**WAC 460-80-440 Depository.** Funds subject to an impound condition shall be placed in a separate trust account with a national bank located in Washington or a Washington bank or trust company. A written consent of the depository to act in such capacity shall be filed with the director.

[Order 11, § 460-80-440, filed 3/3/72.]

**WAC 460-80-450 Release of impounds.** The director will authorize the depository to release to the franchisor such amounts of the impounded funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement, or that for other reasons the impound is no longer required for protection of franchisees.

An application for an order of the director authorizing the release of impounds to the franchisor shall be verified and shall contain the following:

(a) A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound condition.

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

(c) The names of each franchisee (or subfranchisor) and the amount held in the impound for the account of each franchisee (or subfranchisor).

(d) A statement by the franchisee that the franchisor has performed his obligations under the franchise contract.

(e) Such other information as the director may require in a particular case.

[Order 11, § 460-80-450, filed 3/3/72.]

**WAC 460-80-500 Advertising.** All advertising to be used to offer a franchise, subject to the registration requirement, for sale must be filed in the office of the director at least 7 days prior to the publication and all

advertising shall be subject to the following statement of policy:

(a) An advertisement should not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss or default is impossible or unlikely, or that earnings or profits are assured.

(b) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is (i) based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered (ii) for a reasonable period only and (iii) is substantiated by data which clearly supports such projections.

(c) An advertisement should normally contain the name and address of the person using the advertisement.

(d) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection (d) shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.

(e) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement.

[Order 11, § 460-80-500, filed 3/3/72.]

by the purchaser that he had received a copy of the offering circular and that it had been received 48 hours before the sale.

(3) Every franchise broker or selling agent shall keep a copy of all advertising used in the sale of said franchise, including but not limited to the radio, newspaper, T.V. media, letters, brochures, etc.

(4) Every franchise broker or selling agent shall preserve for a period of not less than six years from the closing of any franchise account, all records, books and memorandums that relate to the franchisee.

[Order 11, § 460-82-200, filed 3/3/72.]

#### Chapter 460-82 WAC BROKER/SELLING AGENT

WAC

460-82-200 Record requirements.

#### 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 460-82-200 Record requirements.** Every franchise broker or selling agent shall make and keep current the following books and records relating to his business:

(1) Records of original entry containing the sale of franchise, to whom sold, the aggregate price, the amount paid down, the installment payments, if any, the commission paid to the Broker or selling agent, the amount dispersed for advertising and other amounts to be funded to the franchisor.

(2) An individual registration card for each franchisee, his name and address, aggregate amount to be paid, terms of the payment, a copy of the receipt signed