Chapter 460-17A WAC
SMALL COMPANY OFFERING REGISTRATION

WAC

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WAC 460-17A-010 SCOR registration. These rules are intended to encourage investment in small businesses. The rules in this chapter offer an optional method of registration for companies 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 SCOR registration form as the disclosure document for the offering. This method of registration shall be known as SCOR registration.

[Statutory Authority: RCW 21.20.450. 96-11-027, § 460-17A-010, filed 5/6/96, effective 6/6/96. 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 SCOR 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 21.20.450. 96-11-027, § 460-17A-020, filed 5/6/96, effective 6/6/96. 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) SCOR is intended to allow small companies to conduct limited offerings of securities. SCOR uses a simplified offering format designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the SCOR format and will, therefore, be unable to utilize SCOR. The administrator finds that SCOR is generally unsuitable for the following issuers and programs and that, therefore, they will not be allowed to utilize SCOR unless written permission is obtained from the administrator based upon a showing that adequate disclosure can be made to investors using the SCOR format:

(a) Holding companies, companies whose principal purpose is owning stock in, or supervising the management of, other companies;

(b) Portfolio companies, such as a real estate investment trusts;

(c) Issuers with complex capital structures;

(d) Commodity pools;

(e) Equipment leasing programs; and

(f) Real estate programs.

(2) 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 or centrally managed limited liability company organized under the law of the United States or Canada, or any state, province, or territory or possession thereof, or the District of Columbia, and have its principal place of business in one of the foregoing.

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

(c) The issuer is not a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person.

(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 $1.00 per share. The offering price for common ownership interests in limited liability company (and the exercise price, if the securities are options, warrants, or rights for common ownership interests, and the conversion price if the securities are convertible into common ownership interests) must be equal to or greater than $1.00 per unit of interest.

(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.

(3) SCOR 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.

[Statutory Authority: RCW 21.20.450. 98-17-013, § 460-17A-030, filed 8/10/98, effective 9/10/98; 96-11-027, § 460-17A-030, filed 5/6/96, effective 6/6/96; 91-04-009, § 460-17A-030, filed 1/25/91, effective 2/25/91; 88-17-012 (Order SDO-048-88), § 460-17A-030, filed 8/8/88.]

WAC 460-17A-040 Disqualification from use of SCOR registration. (1) SCOR 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:

(a) Has filed an application for registration which is the subject of a currently effective registration stop order entered pursuant to any federal, state, or provincial securities law within five years prior to the filing of the SCOR registration application;

(b) Has been convicted within five years prior to the filing of the SCOR 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;

(c) Is currently subject to any federal, state, or provincial administrative enforcement order or judgment entered by any state or provincial securities administrator or the Securities and Exchange Commission within five years prior to the filing of the SCOR registration application;

(d) Is subject to any federal, state, or provincial 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 SCOR registration application;

(e) Is subject to any federal, state, or provincial 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;

(f) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminarily, or permanently restrains or enjoins 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 SCOR registration application; or

(g) Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking or, within the past five years, has been the subject of an action of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, or investment adviser or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a foreign jurisdiction suspending or expelling such person from membership in such exchange or self-regulatory organization.

(2) The prohibitions of subsection (1)(a) through (c) and (e) 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 or province in which the administrative order or judgment was entered against such person, or if the broker-dealer employing such person 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.

(3) 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 jurisdiction which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied.

[Statutory Authority: RCW 21.20.450. 98-17-013, § 460-17A-040, filed 8/10/98, effective 9/10/98; 96-11-027, § 460-17A-040, filed 5/6/96, effective 6/6/96; 88-17-012 (Order SDO-048-88), § 460-17A-040, filed 8/8/88.]

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

[Statutory Authority: RCW 21.20.450. 96-11-027, § 460-17A-050, filed 5/6/96, effective 6/6/96; 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 SCOR registrant. In addition to filing a properly completed form SCOR, applicants for SCOR registration shall file the following exhibits with the administrator:

(1) Form of selling agency agreement;

(2) The issuer's articles of incorporation, articles of organization, or other charter documents and all amendments thereto;

(3) The issuer's bylaws or operating agreement, as amended to date;

(4) Copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managers or managing members setting forth terms and or capital ownership interest 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 or ownership interest certificate to be offered (including any legend restricting resale);

(7) Consent to service of process accompanied by appropriate corporate or company 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 any 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 or managers, managing members, and principal members.

[Statutory Authority: RCW 21.20.450. 96-11-027, § 460-17A-060, filed 5/6/96, effective 6/6/96. 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 adopted in WAC 460-16A-205 (1)(p) shall apply except that promotional shares need be escrowed only to the extent that such shares exceed sixty percent of the shares to be outstanding upon the completion of the offering;

(2) The loan and material affiliated transaction provisions of WAC 460-16A-205 (1)(g) shall apply except that the independent director requirements may be waived;

(3) The options and warrants provisions of WAC 460-16A-205 (1)(h) shall apply;

(4) WAC 460-16A-205 (1)(t), concerning selling and underwriting expenses, shall apply;

(5) The impoundment of proceeds provisions of WAC 460-16A-205 (1)(n) shall apply;

(6) WAC 460-16A-205 (1)(s), concerning specificity in the use of proceeds, shall apply;

(7) WAC 460-16A-205 (1)(u) may be applied to issuers in unsound financial condition;

(8) The preferred stock provisions of WAC 460-16A-205 (1)(o) shall apply;

(9) WAC 460-16A-205 (1)(v), concerning unequal voting rights, shall apply; and

(10) 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 21.20.450. 98-17-013, § 460-17A-070, filed 8/10/98, effective 9/10/98; 96-11-027, § 460-17A-070, filed 5/6/96, effective 6/6/96; 91-04-009, § 460-17A-070, filed 1/25/91, effective 2/25/91. 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.]