

Chapter 474-10 WAC

REGULATIONS GOVERNING THE STATE TREASURER'S APPROVAL OF THE USE OR REFERENCE TO A LEASE FOR OR ON BEHALF OF A STATE AGENCY AS COLLATERAL OR SECURITY FOR THE PAYMENT OF SECURITIES PURSUANT TO THE PROVISIONS OF SECTION 1(4), CHAPTER 117, LAWS OF 1997

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WAC 474-10-010 Purpose. The purpose of this chapter shall be to implement section 1(4), chapter 117, Laws of 1997 and to establish the criteria pursuant to which the state treasurer may grant approval of an offering for sale through private placement securities which use or refer to a lease for or on behalf of a state agency as collateral or security for payment.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-010, filed 1/7/99, effective 2/7/99.]

WAC 474-10-020 Definitions. As used in chapter 474-10 WAC, the following terms shall have the meanings 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 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 C.F.R. 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) "CUSIP identifier" means a six digit number assigned to a particular issuer by the administering agent for the American Bankers Association's Committee on Uniform Security Identification Procedures.

(4) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(5) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(6) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(7) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(8) "PPN identifier" means a six digit number assigned to a particular issuer by the administering agent for the American Bankers Association's Committee on Uniform Security Identification Procedures.

(9) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificates of interest or participation in any profit-sharing agreement; collateral-trust certificates; preorganization certificate of subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; charitable gift annuity; any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by a real estate broker licensed

by the state of Washington. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(11) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" means the federal statutes of those names as amended.

(12) "Treasurer" means the treasurer of the state of Washington.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-020, filed 1/7/99, effective 2/7/99.]

WAC 474-10-030 Public offerings. Unless an offer or sale of a security that uses or refers to a lease for or on behalf of a state agency as collateral or security for payment is a private placement pursuant to the provisions of WAC 474-10-040, such offer or sale is a public offering for purposes of section 1(4), chapter 117, Laws of 1997. Notwithstanding the foregoing, a lessor may assign or encumber its interest in a lease as security for the repayment of a promissory note provided that the transaction would otherwise be an exempt transaction under RCW 21.20.320.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-030, filed 1/7/99, effective 2/7/99.]

WAC 474-10-040 Private placements. The following transactions are private placements for the purposes of section 1(4), chapter 117, Laws of 1997:

- (1) Any offer or sale to an accredited investor.
- (2) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.
- (3) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.
- (4) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

In any sales pursuant to exemption (1) by an issuer, an affiliate of the issuer, or an underwriter, the person selling the securities shall exercise reasonable care to assure that the securities are being sold only to accredited investors and to assure that any resale(s) of the securities complies with the provisions of section 1(4), chapter 117, Laws of 1997 and the provisions of chapter 474-10 WAC. Reasonable care may be demonstrated by the following:

- (a) Reasonable inquiry to determine that the purchaser is an accredited investor;
- (b) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or herself or for other persons;
- (c) Written disclosure to each purchaser prior to sale that the securities may only be resold in private placements pursuant to the provisions of section 1(4), chapter 117, Laws of 1997 and the provisions of chapter 474-10 WAC; and
- (d) Placement of a legend on the certificate or other document that evidences the securities stating that the securities are subject to section 1(4), chapter 117, Laws of 1997 and the provisions of chapter 474-10 WAC, and setting forth or refer-

ring to the restrictions on transferability and sale of the securities.

In any proceeding involving the rules in WAC 474-10-040, the burden of proving compliance with or an exception from a rule, definition or condition is upon the person claiming it.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-040, filed 1/7/99, effective 2/7/99.]

WAC 474-10-050 Required disclosures. In any offering or sale of a security which uses or refers to a lease for or on behalf of any state agency as collateral or security for payment, the issuer or seller shall provide the following written disclosures to any prospective purchaser:

(1) Any prospectus, offering circular or other written information provided to any prospective purchaser shall include the following disclosure on the cover page thereof:

"THE SECURITIES DESCRIBED HEREIN DO NOT REPRESENT AN OBLIGATION OF THE STATE OF WASHINGTON OR ANY DEPARTMENT, AGENCY OR INSTRUMENTALITY THEREOF. THE CREDIT OF THE STATE OF WASHINGTON IS NOT PLEDGED TO THE REPAYMENT OF THESE SECURITIES. THE STATE OF WASHINGTON SHALL NOT BE OBLIGATED TO PAY THESE SECURITIES OR ANY INTEREST OR DIVIDENDS THEREON UNDER ANY CIRCUMSTANCES."

(2) Any prospectus, offering circular or other written information provided to any prospective purchaser shall include the following disclosure:

"APPROVAL OF THE STATE TREASURER OF THE USE OR REFERENCE TO A LEASE FOR OR ON BEHALF OF A STATE AGENCY AS COLLATERAL OR SECURITY FOR THE PAYMENT OF SECURITIES PURSUANT TO CHAPTER 117, LAWS OF 1997, SECTION 1(4) AND CHAPTER 474-10 WAC DOES NOT SIGNIFY THAT THE STATE TREASURER HAS APPROVED, ENDORSED, OR RECOMMENDED THESE SECURITIES."

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-050, filed 1/7/99, effective 2/7/99.]

WAC 474-10-060 Attorney general opinions. In any offering or sale of a security which uses or refers to a lease for or on behalf of any state agency as collateral or security for payment, no state of Washington attorney general opinions or memoranda, or excerpts thereof, may be used or cited in any prospectus, offering circular or other written information provided to any prospective purchaser without the prior written approval of the treasurer. Such approval shall not be withheld if in the judgment of the treasurer such use of an opinion, memorandum or excerpt thereof would not be misleading by implying, directly or indirectly, that the state of Washington or any agency thereof is an obligor with regard to payment of the security. Notwithstanding the foregoing, nothing in this rule shall prevent the office of the attorney general from exercising any legal rights that it may have with respect to the use or publication by others of attorney general opinions or memoranda.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-060, filed 1/7/99, effective 2/7/99.]

WAC 474-10-070 State agency representations. In any offering or sale of a security which uses or refers to a

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lease for or on behalf of any state agency as collateral or security for payment, no representation by a state agency regarding use of a facility, or excerpts thereof, may be used or cited in any prospectus, offering circular or other written information provided to any prospective purchaser without the prior written approval of the treasurer.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-070, filed 1/7/99, effective 2/7/99.]

WAC 474-10-080 Use of state of Washington CUSIP and PPN identifiers. In any offering or sale of a security which uses or refers to a lease for or on behalf of any state agency as collateral or security for payment, use of any state of Washington CUSIP identifier or PPN identifier is expressly prohibited.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-080, filed 1/7/99, effective 2/7/99.]

WAC 474-10-090 Procedure for review. In any initial offering or sale of a security which uses or refers to a lease for or on behalf of any state agency as collateral or security for payment for which the treasurer's written approval has not been secured the issuer shall request approval as follows. The issuer shall submit to the office of the state treasurer two copies of the prospectus, offering circular or other written information in connection with the offering and two copies of the form of security. The office of the state treasurer shall have 15 full business days to make a determination regarding an approval or disapproval of the offering pursuant to the criteria in section 1(4), chapter 117, Laws of 1997 and this chapter 474-10 WAC. Any such determination shall be made in writing. Any determination of approval shall be contingent upon any such offering or sale being completed in accordance with the provisions of this chapter 474-10 WAC. The treasurer may, in his or her discretion, require the issuer to provide evidence that any such offering or sale is a private placement pursuant to the provisions of this chapter 474-10 WAC.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-090, filed 1/7/99, effective 2/7/99.]

WAC 474-10-100 Approval pursuant to statute. Any approval by the treasurer pursuant to the provisions of section 1(4), chapter 117, Laws of 1997 and this chapter 474-10 WAC of the use or reference to a lease for or on behalf of a state agency as collateral or security for the payment of securities does not constitute an approval or recommendation of the securities by the treasurer.

[Statutory Authority: 1997 c 117. 99-03-004, § 474-10-100, filed 1/7/99, effective 2/7/99.]

