

Chapter 460-16A WAC

GENERAL RULES

WAC

460-16A-005 Application.
 460-16A-010 Appearance and practice before the securities division.
 460-16A-015 Electronic or telephonic submissions.
 460-16A-020 Interpretive opinions and no-action letters.
 460-16A-025 Applications and reports.
 460-16A-030 Payment of fees and refunds.
 460-16A-040 Voting rights of preferred stocks.
 460-16A-045 Protective provisions for preferred shares.
 460-16A-050 Opinion of counsel.
 460-16A-055 Corporate resolution.
 460-16A-065 Convertible senior securities.
 460-16A-070 Assessments.
 460-16A-080 Subscription agreement.
 460-16A-115 Reimbursement of expenses incurred by promoters.
 460-16A-120 Price variance.
 460-16A-125 Prospectus or offering circular.
 460-16A-126 Annual revision of offering circular.
 460-16A-127 Offering registered with the Securities and Exchange Commission ("SEC").
 460-16A-180 Technical reports.
 460-16A-185 Technical reports prepared by state employee.
 460-16A-200 Debt offering standards.
 460-16A-205 Adoption of NASAA statements of policy.
 460-16A-390 Notice of termination of offering—Change of officers.

460-16A-104

460-16A-105

460-16A-106

460-16A-107

460-16A-108

460-16A-109

460-16A-110

460-16A-111

460-16A-130

460-16A-135

460-16A-140

460-16A-145

SDO-164A-87), § 460-16A-103, filed 1/11/88.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

Escrow of promotional shares. [Statutory Authority: RCW 21.20.250 and 21.20.450. WSR 88-03-015 (Order SDO-164A-87), § 460-16A-104, filed 1/11/88.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

Release provisions. [Statutory Authority: RCW 21.20.250 and 21.20.450. WSR 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.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

Terms of escrow. [Statutory Authority: RCW 21.20.250 and 21.20.450. WSR 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.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

Amount of cheap stock. [Order 304, § 460-16A-107, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

Inapplicability of restrictions on amounts of promotional shares. [Statutory Authority: RCW 21.20.450. WSR 88-03-015 (Order SDO-164A-87), § 460-16A-108, filed 1/11/88; WSR 82-20-067 (Order SDO-115-82), § 460-16A-108, filed 10/5/82.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

Hi-tech exemption from promotional shares rules. [Statutory Authority: RCW 21.20.450. WSR 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. WSR 84-07-043 (Order SDO-39-84), § 460-16A-109, filed 3/21/84.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

Rights of promotional shares. [Statutory Authority: RCW 21.20.450. WSR 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.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.

Equity investment of promoters. [Statutory Authority: RCW 21.20.450. WSR 96-11-020, § 460-16A-111, filed 5/6/96, effective 6/6/96; Order SD-131-77, § 460-16A-111, filed 11/23/77.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.

Escrow. [Order 304, § 460-16A-130, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

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 WSR 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

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 WSR 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

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

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

460-16A-035 Voting rights of common stock. [Order 304, § 460-16A-035, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.

460-16A-075 Selling expenses. [Order 304, § 460-16A-075, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.

460-16A-085 Options to underwriters. [Statutory Authority: RCW 21.20.450. WSR 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.] Repealed by WSR 93-01-075, filed 12/14/92, effective 1/14/93. Statutory Authority: RCW 21.20.450.

460-16A-090 Pro rata options to shareholders. [Order 304, § 460-16A-090, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.

460-16A-095 Options to purchasers of debt securities. [Order 304, § 460-16A-095, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.

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 WSR 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450.

460-16A-101 Application to promotional shares. [Statutory Authority: RCW 21.20.250 and 21.20.450. WSR 88-03-015 (Order SDO-164A-87), § 460-16A-101, filed 1/11/88.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

460-16A-102 Definitions applicable to promotional shares. [Statutory Authority: RCW 21.20.450. WSR 91-04-008, § 460-16A-102, filed 1/25/91, effective 2/25/91. Statutory Authority: RCW 21.20.250 and 21.20.450. WSR 88-03-015 (Order SDO-164A-87), § 460-16A-102, filed 1/11/88.] Repealed by WSR 95-17-068, filed 8/16/95, effective 9/16/95. Statutory Authority: RCW 21.20.450.

460-16A-103 Amount of promotional shares. [Statutory Authority: RCW 21.20.250 and 21.20.450. WSR 88-03-015 (Order

- 460-16A-150 by WSR 88-03-015 (Order SDO-164A-87), filed 1/11/88. Statutory Authority: RCW 21.20.450. Imposition of impound condition. [Statutory Authority: RCW 21.20.450. WSR 96-11-024, § 460-16A-150, filed 5/6/96, effective 6/6/96; 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.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-155 Operation of impound condition. [Order 304, § 460-16A-155, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-156 Source of impound deposits. [Statutory Authority: RCW 21.20.250. WSR 79-09-028 (Order SD-57-79), § 460-16A-156, filed 8/14/79.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-160 Subscription agreements and purchase receipts. [Order 304, § 460-16A-160, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-165 Depository. [Order 304, § 460-16A-165, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-170 Release of impounds. [Statutory Authority: RCW 21.20.450. WSR 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.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-175 Failure to comply with impound condition. [Order 304, § 460-16A-175, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-190 Petition for repeal or adoption of new rules. [Order 304, § 460-16A-190, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. Statutory Authority: RCW 21.20.450.
- 460-16A-210 Prohibited practices with regard to preferred stock. [Statutory Authority: RCW 21.20.450. WSR 93-01-074, § 460-16A-210, filed 12/14/92, effective 1/14/93.] Repealed by WSR 98-17-013, filed 8/10/98, effective 9/10/98. 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

[Ch. 460-16A WAC p. 2]

may participate in an adjudicative proceeding as defined in RCW 34.05.010 unless such officer is also an attorney at law.

[Statutory Authority: RCW 21.20.450. WSR 96-11-023, § 460-16A-010, filed 5/6/96, effective 6/6/96; Order 304, § 460-16A-010, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-015 Electronic or telephonic submissions. (1) Issuers filing by coordination may file electronically with the division. The Securities Registration Depository, Inc., its successors or assigns, is designated to receive electronic filings on behalf of the division.

(2) For issuers not filing electronically, messages directed to the division by means of facsimile, other telephone transeiving equipment or electronic transmission 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 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 telephonic or electronic transmissions may not be utilized for that filing.

[Statutory Authority: RCW 21.20.450, 21.20.190 and 21.20.510. WSR 96-11-019, § 460-16A-015, filed 5/6/96, effective 6/6/96; Order 304, § 460-16A-015, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-020 Interpretive opinions and no-action letters. The administrator, in his or her discretion, may honor requests from interested persons for no-action letters and interpretive opinions. The following procedures must be followed in requesting a no-action or interpretive opinion from the division:

(1) The request must be submitted to the administrator in writing. The letter should be captioned with the name of the party who will be relying upon the administrator's response and should indicate that a no-action or interpretive opinion is sought. The filing fee required by RCW 21.20.340 must accompany the request.

(2) The requesting letter should cite the particular statutes or rules for which interpretation or no-action is sought.

(3) The names of all involved companies and parties should be disclosed. The division cannot issue interpretive or no-action letters relating to unnamed companies or individuals or hypothetical situations, nor on matters of pending, or in preparation for, litigation.

(4) The request should be tailored to resolving the immediate issues and should not attempt to discuss every possible situation that may arise in the future.

(5) The letter should be concise and contain all material facts necessary to resolve the issues at hand. Relevant supporting documents may be included, but are not a substitute for subsection (6) of this section.

(6) It is important that the letter identify the issues at hand, the proposed resolution, and the precedents or other legal authority supporting that position.

(7) The administrator will not issue no-action or interpretive opinions regarding the availability of exemptions pursuant to RCW 21.20.320(1).

Letters that are not prepared in accordance with the above-listed procedures may be returned to the sender for compliance.

[Statutory Authority: RCW 21.20.450, WSR 98-17-013, § 460-16A-020, filed 8/10/98, effective 9/10/98; 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-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;

(6/8/11)

(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, WSR 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-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.

[Ch. 460-16A WAC p. 3]

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

WAC 460-16A-115 Reimbursement of expenses incurred by promoters. Actual and necessary expenses paid by a promoter in connection with the founding or organizing of a business enterprise, the offering of its securities and the acquisition of assets with which the issuer is to carry on its business may be reimbursed out of the proceeds of the sale of securities, subject, however, in the case of selling expenses to the limitation on total selling expenses contained in WAC 460-16A-205 (1)(t).

[Statutory Authority: RCW 21.20.450. WSR 98-17-013, § 460-16A-115, filed 8/10/98, effective 9/10/98; Order 304, § 460-16A-115, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]

WAC 460-16A-120 Price variance. (1) Securities of the same class to be offered under the same registration statement should be offered and sold at the same price.

(2) The administrator may waive the provision of subsection (1) of this section to allow reduced sales commissions for purchases of large blocks of the issuer's securities, provided the net proceeds from such sales are the same as those realized from the sale of securities at the full commission price.

[Statutory Authority: RCW 21.20.450. WSR 98-17-013, § 460-16A-120, filed 8/10/98, effective 9/10/98; WSR 96-11-021, § 460-16A-120, filed 5/6/96, effective 6/6/96; 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.

[Statutory Authority: RCW 21.20.450. WSR 96-11-024, § 460-16A-125, filed 5/6/96, effective 6/6/96; 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. WSR 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-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-200 Debt offering standards. (1) Debt securities may be offered and sold only if the issuer shows a reasonable ability to service the debt.

(2) For purposes of this section, unless otherwise allowed by the administrator, "reasonable ability to service the debt" means:

(a) The issuer must have a positive net worth and not be in the development stage; and

(b) The issuer must demonstrate, based upon the results of its operations for its most recently ended fiscal year and for its latest interim period as reflected in its financial statements, a pro forma earnings to fixed-charges ratio of 1 to 1 or greater.

(3) For purposes of this section:

(a) "Earnings" shall mean pretax income from continuing operations plus fixed charges as defined in (b) of this subsection, adjusted to exclude any interest capitalized during the period.

(b) "Fixed charges" shall mean the total of (i) interest, whether expensed or capitalized, (ii) amortization of debt expense and discount or premium relating to indebtedness, whether expensed or capitalized, and (iii) such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case.

(c) The pro forma earnings to fixed charges ratio shall be calculated by adjusting the corresponding historical ratio to give effect to the net increase or decrease in interest expense resulting from (i) the proposed issuance of new debt, and (ii) the corresponding retirements of any debt presently outstanding (but only for the period of time outstanding) which will be retired with the proceeds of the proposed offering. If only a portion of the proceeds will be used to retire presently outstanding debt, then only a related portion of interest should be used in the pro forma adjustment.

(d) An issuer may elect to use the definitions of "earnings," "fixed charges," and the method for determining the ratio of earnings to fixed charges set forth in Item 503 of Securities and Exchange Commission Regulation S-K to determine whether that issuer meets the requirement of subsection (2)(b) of this section.

[Statutory Authority: RCW 21.20.450, WSR 91-04-008, § 460-16A-200, filed 1/25/91, effective 2/25/91.]

WAC 460-16A-205 Adoption of NASAA statements of policy. (1) In order to promote uniform regulation, the administrator adopts the following North American Securities Administrators Association (NASAA) statements of policy for offerings registering pursuant to RCW 21.20.180 or 21.20.210:

(a) Registration of publicly offered cattle feeding programs, as adopted September 17, 1980;

(b) Registration of commodity pool programs, as adopted with amendments through May 7, 2007;

(c) Equipment programs, as adopted with amendments through May 7, 2007;

(d) Registration of oil and gas programs, as adopted with amendments through May 7, 2007;

(e) Real estate investment trusts, as adopted with amendments through May 7, 2007;

(f) Real estate programs, as adopted with amendments through May 7, 2007;

(g) Loans and other material affiliated transactions, as adopted with amendments through March 31, 2008;

(h) Options and warrants, as adopted with amendments through March 31, 2008;

(i) Registration of direct participation programs - omnibus guidelines, as adopted with amendments through May 7, 2007;

(j) Mortgage program guidelines, as adopted with amendments through May 7, 2007;

(k) Church bonds, as adopted April 14, 2002;

(l) Health care facility offerings, pertaining to the offering of nonprofit health care facility bonds, as adopted April 5, 1985;

(m) Corporate securities definitions, as adopted with amendments through March 31, 2008;

(n) Impoundment of proceeds, as adopted with amendments through March 31, 2008;

(o) Preferred stock, as adopted with amendments through March 31, 2008;

(p) Promotional shares, as adopted with amendments through March 31, 2008, except that the term promotional shares shall be limited to those equity securities which were issued within the last three years and that all promotional shares in excess of twenty-five percent of the shares to be outstanding upon completion of the offering may be required to 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;

(q) Registration of asset-backed securities, as adopted with amendments through May 7, 2007, except for offerings registering or required to register pursuant to chapter 460-33A WAC or RCW 21.20.705 through 21.20.855;

(r) Promoters' equity investment, as adopted with amendments through March 31, 2008;

(s) Specificity in use of proceeds, as adopted with amendments through March 31, 2008;

(t) Underwriting expenses, underwriter's warrants, selling expenses, and selling security holders, as adopted with amendments through March 31, 2008;

(u) Unsound financial condition, as adopted with amendments through March 31, 2008;

(v) Unequal voting rights, as adopted with amendments through March 31, 2008;

(w) Guidelines for general obligation financing by religious denominations, as adopted April 17, 1994;

(x) Risk disclosure guidelines, as adopted September 9, 2001;

(y) Church extension fund securities, as adopted with amendments through April 18, 2004; and

(z) Guidelines for cover legends, as adopted October 2, 2004.

(2) An offering registering pursuant to RCW 21.20.180 or 21.20.210 that falls within one or more of the statements of policy listed in subsection (1) of this section must comply with the requirements of said statement of policy or policies.

(3) The statements of policy referred to in subsection (1) of this section are found in *CCH NASAA Reports* published by Commerce Clearing House. Copies are also available at the office of the securities administrator.

[Statutory Authority: RCW 21.20.450, WSR 11-13-036, § 460-16A-205, filed 6/8/11, effective 7/9/11; WSR 08-05-003, § 460-16A-205, filed 2/6/08, effective 3/8/08; WSR 02-22-106, § 460-16A-205, filed 11/6/02, effective 12/7/02; WSR 98-17-013, § 460-16A-205, filed 8/10/98, effective 9/10/98; WSR 96-11-017, § 460-16A-205, filed 5/6/96, effective 6/6/96; WSR 95-17-068, § 460-16A-205, filed 8/16/95, effective 9/16/95; WSR 93-01-075, § 460-16A-205, filed 12/14/92, effective 1/14/93; WSR 91-04-008, § 460-16A-205, filed 1/25/91, effective 2/25/91.]

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 financial institutions 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.

[Statutory Authority: RCW 21.20.450. WSR 96-11-023, § 460-16A-390, filed 5/6/96, effective 6/6/96; Order 304, § 460-16A-390, filed 2/28/75, effective 4/1/75. Formerly chapter 460-16 WAC.]