



**Advising Small & Mid-Sized Businesses
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Advising Small Businesses
About the Securities Laws**

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ADVISING SMALL BUSINESSES ABOUT THE SECURITIES LAWS

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ADVISING SMALL BUSINESSES ABOUT THE SECURITIES LAWS
By David D. Hoff & Rodger I. Kohn

New and growing businesses are almost always in need of capital. Often such businesses want to take on “investors” to help fund their business.

Sometimes your client has friends and family or loyal customers who want to be part of the excitement of the growing business. In many cases the amount that the business wants to raise is relatively modest. In any of these scenarios, you must think about the securities laws.

In these materials we start with a basic overview of the applicable state and federal securities laws to provide some context and then turn to some of the commonly used tools for helping clients comply with these laws.

In December 2010 the Washington State Department of Financial Institutions (“DFI”) issued a cease and desist order to the Columbia City Theater, halting its sale of allegedly unregistered securities and highlighting many of the issues touched on in this presentation. The Theater had offered its stock through its website and in a story that aired on local new outlets about efforts to save the theater. At the time, the Theater was offering “stock reservations” in order to immediately raise \$50,000. DFI stepped in, alleging that the Theater had violated securities registration and anti-fraud laws. Officials from DFI said the Theater had offered company stock, but failed to register, to give potential purchasers information on potential risks and offer financial statements to substantiate claims it had a “successful track record.” DFI officials also said the Theater failed to address over \$150,000 in promissory notes issued by a predecessor company.

OVERVIEW OF THE SECURITIES LAWS

What Law Applies?

The sale of securities in Washington State is governed by the Securities Act of Washington, RCW Ch. 21.20 (the “WSSA”) and the Securities Act of 1933 (Securities Act)¹, and the Securities Exchange Act of 1934 (Exchange Act)². In addition, there are administrative regulations enacted under each of these acts. If your client is selling securities to residents of other states, compliance with the laws of those states must also be coordinated.

In terms of case law, Washington courts often look to federal law precedent. However, the WSSA and the cases decided under it generally tend to protect the investor with more liberal enforcement than the federal counterparts.

What is a “Security”?

The definition of what constitutes a security under the WSSA is broad, enumerating specific instruments such as notes, stock, debentures, evidence of indebtedness. Other definitions are more subjective, including “the 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

¹ The Securities Act generally requires companies to give investors “full disclosure” of all “material facts,” the facts investors would find important in making an investment decision. This Act also requires companies to file a registration statement with the SEC that includes information for investors. The SEC does not evaluate the merits of offerings, or determine if the securities offered are “good” investments. The SEC staff reviews registration statements and declares them “effective” if companies satisfy its disclosure rules.

² The Exchange Act requires publicly held companies to disclose information continually about their business operations, financial conditions, and managements. These companies, and in many cases their officers, directors and significant shareholders, must file periodic reports or other disclosure documents with the SEC. In some cases, the company must deliver the information directly to investors.

right to exercise practical and actual control over the managerial decisions of the venture.”³

As a starting point, Washington courts look to the test originally formulated under the federal Securities Act in *SEC v. Howey*, 328 U.S. 293 (1946). The *Howey* test is a three-step process used to determine if a product or offering is a security. In *Howey*, the Court found that an investment contract is (1) an investment of money or other tangible consideration, (2) in a common enterprise with reasonable expectations of profit, and (3) derived solely from the efforts of others. In other words, investing money into a business where a profit is gained without effort on the investor’s part is a security.

While the broad definition set forth in RCW 21.20.005(12) and the *Howey* test are good starting points, the Washington courts will resolve ambiguity as the existence of a security by focusing on the economic substance and background facts of the transaction, including the terms of the offer and the plan of

³ RCW 21.20.005 (12)(a) “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or 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; fractional undivided interest in an oil, gas, or mineral lease or in payments out of production under a lease, right, or royalty; charitable gift annuity; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof; or 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 security under this subsection. This subsection applies whether or not the security is evidenced by a written document.

(b) “Security” does not include: (i) Any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period; or (ii) an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974.

distribution. *Cellular Engineering Ltd. v. O'Neill*, 118 Wn. 2d 16, 24, 820 P.2d 941 (1991). In such cases the court will place the substance and economic reality of the transaction over the form. *Id.*

This deeper analysis is important when dealing with promissory notes and limited liability company interests – two areas that commonly arise for small businesses.

Promissory Notes. Because “notes” are specifically included within the definition of security under WSSA, Washington courts start with the presumption a note is a security. *State v. Argo* 81 Wn. App. 552, 915 P.3d 1103 (1996). As recognized by the United States Supreme Court in *Reves v. Ernst & Young*, 494 U.S. 56, 62 (1990), however, not all notes involve investments. In the *Reves* case, the Supreme Court found that the phrase “any note” contained in Exchange Act should not be interpreted to mean literally “any note,” but must be understood against the backdrop of what Congress was attempting to accomplish. In order to determine which notes should be considered securities, the Supreme Court adopted the “family resemblance” test. *Id.* at 65. This test was adopted in Washington in the *Argo* case.

Under this test, the court begins with a presumption that every note is a security, but that presumption can be rebutted in two ways. *Id.* The first way of overcoming the presumption is by showing that the note in question “bears a family resemblance” to a list of instruments commonly denominated “notes” that fall outside the “security” category. *Id.*⁴ The second is to weigh (1) the

⁴ This list includes: a note delivered in consumer financing, a note secured by a mortgage on a home, a short-term note secured by a lien on a small business or some of its assets, a note

motivations that would prompt a reasonable seller and buyer to enter into the transaction; (2) the “plan of distribution” of the instrument to determine whether it is an instrument where there is “common trading for speculation or investment;” (3) the reasonable expectations of the investing public; and (4) whether another regulatory scheme significantly reduces the risk of the instrument. *Id.* at 66-67. In sum, if the seller’s purpose is to raise money for the general use of its business and the buyer’s primary motivation is in the profit the note is expected to return, then the instrument is likely a “security.”

LLC Interests. Because the wide diversity in the ways LLC can be structured whether interests in LLCs are considered securities turns on the particular facts and circumstances. In considering whether a particular interest is a security, the first step looks at the LLC’s governance, *i.e.* whether is it member-managed or manager-managed.

When a LLC is member-managed it is more analogous to a general partnership. General partnership interests are not presumed to be a security. *See Odom v. Slavik*, 703 F2d 212 (6th Cir 1983). This is because in general partnerships, because all the partners have the right to participate in the management of the business, their interests generally do not meet the fourth prong of the *Howey* test: profits to be “made through the management and control of others.”

evidencing a “character” loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note which simply formalizes an open-account debt incurred in the ordinary course of business. *Argo* at 563.

But, not unsurprisingly, there are situations where this presumption does not hold. A general partnership interest will be considered a security if the investor can establish *one* of the following: (1) the operating agreement excludes the investor from effecting the management of the partnership, (2) the investor is particularly unknowledgeable in business affairs, or (3) the managing partner's expertise is unique. *Williamson v. Tucker*, 645 F.2d 404, 424 (5th Cir.), *cert denied*, 454 US 897(1981).⁵

Applying the *Williamson* test to determine whether an interest is an LLC is a security, most commentators start with the presumption that interests in member-managed LLCs are not securities. Conversely, because members in manager-managed LLCs are not normally relying on their own management, but rather on the management of the manager, the presumption is that interests in manager-managed LLCs are securities

At the end of the day LLC interests are the type of interests that require “case-by-case analysis” into the “economic realities” of the underlying transaction.

⁵ The *Williamson* court held: “...an investor who claims his general partnership or joint venture interest is an investment contract has a difficult burden to overcome. On the face of a partnership agreement, the investor retains substantial control over his investment and an ability to protect himself from the managing partner or hired manager. Such an investor must demonstrate that, in spite of that *partnership* form which the investment took, he was so dependent on the promoter or a third party that he was in fact unable to exercise meaningful partnership powers. A general partnership or joint venture interest can be designated a security if the investor can establish, for example, that (1) an agreement among the parties leaves so little power in the hands of the partner or venturer that the arrangement in fact distributes power as would a limited partnership; or (2) the partner or venturer is so inexperienced and unknowledgeable in business affairs that he is incapable of intelligently exercising his partnership or venture powers; or (3) the partner or venturer is so dependent on some unique entrepreneurial or managerial ability of the promoter or manager that he cannot replace the manager of the enterprise or otherwise exercise meaningful partnership or venture powers. 645 F.2d at 424. *Williamson* was followed by the Ninth Circuit in *Koch v. Hankins*, 928 F.2d 1471 (9th Cir. 1991).

What Does It Mean If Your Client is Selling a Security?

There are two immediate consequences of selling a security:

1. The issuer must go through a registration process with exhibits, financial statements and other documents which will be reviewed and commented upon by the securities bodies (*i.e.*, the Securities & Exchange Commission and the Washington Dept. of Financial Institutions, Securities Division) ***unless*** you are selling ***exempt securities*** or selling the securities in an ***exempt transaction***.
2. The issuer must make full disclosure of all material facts to offerees and not withhold any information necessary to make other facts misleading.

Failure to comply with the first of these requirements will be a registration violation. Not complying with the second is an anti-fraud violation. ***Even if the offering is exempt from registration (step 1), the offeror is never exempt from anti-fraud violations.***

ADVISING BUSINESSES ABOUT SECURITIES LAWS

The Anti- Fraud Provisions

As noted above, the principal premise underlying all federal and state securities laws are their anti-fraud provisions. The most cited anti-fraud rule is Rule 10b-5, promulgated pursuant to Section 10b of the Federal Securities Act. Nearly every securities fraud case involves, in one way or another, Rule 10b-5 and the anti-fraud provision of the WSSA. RCW 21.20.010 tracks the language of Rule 10b-5 nearly verbatim. Rule 10b-5 states:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- a. To employ any device, scheme, or artifice to defraud,
- b. 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 were made, not misleading, or
- c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5. RCW 21.20.010 differs only in that it does not include the interstate commerce language in the first sentence.

Though the provisions of Rule 10b-5 and the WSSA are similar, Washington courts have interpreted the WSSA differently. For example, Washington courts do not require the plaintiff in a private action to make the same showing of scienter required under Rule 10b-5. While a discussion of the difference in federal and Washington securities fraud cases is beyond the scope of these materials, the important point for the practitioner advising businesses issuing securities in Washington to note is that the WSSA is generally interpreted more liberally to protect the consumer. The WSSA also provides that a successful plaintiff is entitled to a return of the investment plus eight percent interest plus attorneys' fees. Federal law does not have similar remedies.

Registration Requirements

Under WSSA it is unlawful for any person to offer or sell any security in this state unless: (1) the security is registered by coordination or qualification under this chapter; (2) the security or transaction is exempted; or (3) the security

is a federal covered security and, if required, the filing is made and a fee is paid.
RCW 21.20.140.

As stated above, the civil liability for *offering* or selling securities in violation of the registration requirement or other provisions of the WSSA is rescission of the sale, including repayment in full of the purchase price plus interest on the price paid at 8% from the time of sale to the date of rescission plus cost and reasonable attorneys' fees. RCW 21.20.430(1).

Controlling Person Liability

Liability under the WSSA extends to “every person who directly or indirectly controls a seller or buyer..., every partner, officer, director or person who occupies a similar status or performs a similar function of such seller or buyer, every employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesperson...who materially aids in the transaction.” RCW 21.20.430(3). Liability is joint and several with and to the same extent as the seller or buyer, unless such person “sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.” *Id.*

Accordingly, in order to avoid liability any transaction involving the offering or sale of securities must either be registered or find some exemption. Because for most small businesses registration is not an option, the remainder of these materials focus on exempt securities and exempt transactions.

Exempt Securities

Securities that are exempt from registration are defined in RCW 21.20.310. These securities include municipal securities, securities issued by banks, insurance companies and other financial institutions, listed securities (*i.e.* security listed or approved for listing on NYSE, ASE, NASDAQ) and securities issued pursuant to employee benefit plans. The Washington Department of Securities publishes a table at <http://www.dfi.wa.gov/sd/exemptiontable.htm> which provides an excellent summary of the exempt securities.

Exempt Transactions

The most common method of compliance for small businesses raising capital from private investors is to offer the securities through transactions that are exempt from registration. RCW 21.20.320 lists thirteen types of exempt transactions. Again, the Securities Department table published at <http://www.dfi.wa.gov/sd/exemptiontable.htm> provides an excellent summary.

The most frequently used of the exempt transactions are those outlined in RCW 21.20.320(1) which include “any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.” This statute allows for three key types of exempt transaction (1) isolated transactions, (2) private offerings (a/k/a §4(2) offerings), and (3) offerings made pursuant to Regulation D of the Federal Securities Act and the corollary

Washington state rules found in WAC 460-44A-500, *et seq.* Each is discussed in turn, below.

Isolated Transactions

The exemption in RCW 21.20.230(1) for “isolated transactions” is interpreted narrowly. WAC 460-44A-050(1) dictates what qualifies as an isolated transaction and generally limits such transactions to those that do not exceed 1% of the outstanding shares or units of the same class or which do not involve more than three sales in any 24-month period. This exemption does not require a filing with the State Securities Division.

Statutory Private Offering Exemption

RCW 21.20.230 (1) exempts “sales not involving a public offering.” This statutory language parallels Section 4(2) of the Securities Act which exempts from registration “transactions by an issuer not involving any public offering.” WAC 460-44A-050(2) in fact directs that the Washington statute be interpreted consistent with Section 4(2).⁶

Whether a security meets the Section 4(2) exemption is a subjective test that has been defined by the courts as requiring, purchasers of the securities to:

- have enough knowledge and experience in finance and business matters to evaluate the risks and merits of the investment (a “sophisticated investor”), or be able to bear the investment's economic risk;
- have access to the type of information normally provided in a prospectus; and
- agree not to resell or distribute the securities to the public.

⁶ “Sales not involving a public offering,” within the meaning of RCW 21.20.320(1), is interpreted by the director in a manner consistent with section 4(2) of the federal Securities Act of 1933 and Securities and Exchange Commission Securities Act Release No. 4552.

In addition, offerors may not use any form of public solicitation or general advertising in connection with such an offering.

The precise limits of this private offering exemption are uncertain. As the number of offerees increases and their relationship to the offering company and its management becomes more remote, it is more difficult to show that the transaction qualifies for the exemption. If an issuer *offers* securities to even one person who does not meet the necessary conditions, the entire offering may be in violation of the Securities Act and WSSA.

Rule 506 under Regulation D (discussed below), is a safe harbor under Section 4(2). An offering complying with Rule 506 complies with Section 4(2).

No filing is required to claim the “not involving a public offering” exemption, except for offerings conducted under the Rule 506 safe harbor. The Rule 506 filing requirements are discussed below.

Regulation D Offerings

Regulation D (“Reg D”), 17 CFR § 230.501 *et seq.*, is a series of regulations issued pursuant to the Federal Securities Act which contain three rules providing exemptions from the registration requirements. As mentioned above, the Reg D rules have corollaries under the WSSA that appear in WAC 460-44A-500, *et seq.* Private placements offerings under the Reg D rules are a popular method for small companies to raise money from private investors.

While issuers using a Reg D exemption do not have to register their securities and usually do not have to file reports with the SEC, they must file a “Form D.” Form D is a notice that includes the names and addresses of the

issuer's executive officers and stock promoters, but contains little other information.

Critical to the Reg D exemptions is the concept of "accredited investors." The term is defined in 17 CFR § 230.501(a) and WAC 460-44A-501(1). Accredited investors include a director, executive officer, or general partner of the company selling the securities; a business in which all the equity owners are accredited investors; a natural person with a net worth of at least \$1 million (***excluding*** the value of that person's primary residence); and a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year. The full definition is reprinted at the end of these materials.

Practice Pointer: The definition requires the issuer to have a reasonable belief that those persons it treats as accredited investors meet the qualifications set out by rule. Accordingly, issuers should verify each accredited investor's qualifications in writing.

Rule 504 (17 CFR § 230.504 and WAC 460-44A-504): Rule 504 provides an exemption for the offer and sale of up to \$1,000,000 of securities in a 12-month period to an unlimited number of accredited investors and up to 20 "suitable" non-accredited investors. Under WAC 460-44A-504(d) a non-accredited investor is a "suitable" purchaser if the issuer has a reasonable basis to believe, after making reasonable inquiry, that either (i) upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to

his/her financial situation and needs, the investment is suitable; or (ii) the purchaser either alone or with a purchaser representative(s)⁷ has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment. An investment of less than 10% of the investor's net worth is presumed suitable. WAC 460-44A-504(d)(i).

Practice Pointer: The suitability of non-accredited investors should be verified by the issuer in writing.

As with the other Reg D exemptions, in general the issuer may not use public solicitation or advertising to market the securities and purchasers receive “restricted” securities, meaning that they may not resell the securities without registration or an applicable exemption.

Rule 505(17 CFR § 230.505 and WAC 460-44A-505): Rule 505 provides an exemption for offers and sales of securities totaling up to \$5,000,000 in any 12-month period. Under this exemption, issuers may sell to an unlimited number of accredited investors and up to 35 non-accredited investors. While under Reg D, non-accredited investors **do not** need to satisfy the sophistication or wealth standards associated with other exemptions (*i.e.* §4(2) and Rule 506), the Washington regulations incorporate the same suitability standards as described in conjunction with Rule 504. *See* WAC 460-44A-505(b). Purchasers must buy for investment only, and not for resale. The issued securities are restricted. General solicitation or advertising to sell the securities is not permitted.

⁷ See discussion of purchaser representative at note 8, *infra*.

There are also specific financial statement requirements applicable to this type of offering:

- Financial statements need to be certified by an independent public accountant;
- If a company other than a limited partnership cannot obtain audited financial statements without unreasonable effort or expense, only the company's balance sheet, to be dated within 120 days of the start of the offering, must be audited; and
- Limited partnerships unable to obtain required financial statements without unreasonable effort or expense may furnish audited financial statements prepared under the federal income tax laws.

Rule 506(17 CFR § 230.506 and WAC 460-44A-506): Rule 506 is a “safe harbor” for the §4(2) private offering exemption. Rule 506 allows for the issuance of an unlimited dollar amount of securities to an unlimited number of accredited investors and up to 35 non-accredited investors meeting the same suitability standards as discussed in conjunction with Rule 504.

Unlike Rule 505, all non-accredited investors, either alone or with a purchaser representative, must be sophisticated - that is, they must have sufficient knowledge and experience in financial and business matters to make them capable of evaluating the merits and risks of the prospective investment. The sophistication element can be satisfied either alone or with the assistance of a purchaser representative.⁸ In addition, Rule 506 also requires:

- That the issuer be available to answer questions by prospective purchasers;
- The same financial statement requirements as described under Rule 505;
- Purchasers receive “restricted” securities.

⁸ Purchaser’s representative is defined in 17 CFR § 502(h) and WAC 460-44A-502(8). These rules, like the accredited investor rules, require that the issuer have a reasonable belief that the representative meets the definition set out. Again, written verification by the issuer is strongly recommended.

Disclosure Documentation in Exempt Transactions

Outside the required financial statements required under Rules 505 and 506, it is generally up to the issuer to decide what information to give accredited investors provided that *any information provided must not violate the antifraud prohibitions*. Issuers must give non-accredited investors disclosure documents that generally are the same as those used in registered offerings. If information is provided to accredited investors, the same information must be made available to the non-accredited investors as well. The issuer must also be available to answer questions by prospective purchasers. Below is a list of the topics that should be considered in preparing any disclosure documents.

- Type of Security Offered
- Maximum & Minimum Number of Securities Offered
- Price of Security
- Total Proceeds Expected
- Suitability Standards for Investors.
- The Business & Properties of the Company
- Risk Factors
- Capitalization
- Use of Proceeds
- Description/Terms of Securities
- Plan of Distribution of the Securities
- Dividends, Distributions & Redemptions
- Officers & Key Personnel
- Directors of the Company
- Principal Stockholders
- Management Relationships, Transactions & Remuneration
- Litigation
- Tax Matters
- Dilution
- Financial Statements
- Management Discussion & Analysis

Useful Resources

These materials provide only an overview of the securities laws that may be applicable in a particular situation. Fortunately there are a number of resources readily available to help the practitioner. List on the following page are a few of these resources.

Resources List

Washington State Securities Division	http://www.dfi.wa.gov/sd/default.htm
Exemptions from Registration	http://www.dfi.wa.gov/sd/exemptiontable.htm
Raising Small Business Capital Through a Securities Offering	http://www.dfi.wa.gov/sd/raisingcapital.htm
Summary of Reg D Filing Requirements	http://www.dfi.wa.gov/sd/regd-notice.htm
United States Securities & Exchange Commission (the “SEC”)	http://www.sec.gov/index.htm
Information for Small Business	http://www.sec.gov/info/smallbus.shtml
Forms & Regulations	http://www.sec.gov/divisions/corpfin/forms/smallbus.shtml
Directory of State Securities Laws & Regulations	http://www.nasaa.org/Industry_Regulatory_Resources/Directory_of_Securities_Laws_Regulations/

Summary of Reg D Requirements As Applied In Washington State

	504	505	506
Statutory Reference	17 CFR §230.504 WAC 460-44A-504	17 CFR §230.505 WAC 460-44A-505	17 CFR §230.506 WAC 460-44A-506
Offering size (12 month period)	\$1,000,000	\$5,000,000	Unlimited
Number of Investors	Unlimited accredited investors; 20 suitable non-accredited investors from Washington	Unlimited accredited investors; 35 non-accredited investors	Unlimited accredited investors; 35 “sophisticated” non-accredited investors meeting
Investor Qualifications	Non-accredited investors must be “suitable” per WAC 460- 44A-504(d)(i) or (ii); no Exchange Act reporting, blank check or investment companies	Non-accredited investors must be “suitable” per WAC 460-44A- 505(b)(i) or (ii)	Purchaser must be sophisticated (alone or with purchaser representative)
Resale Restrictions	Securities certificate must contain a legend stating restrictions on resale and transferability, and indicate the securities have not been registered	Securities certificate must contain a legend stating restrictions on resale and transferability, and indicate the securities have not been registered	Securities certificate must contain a legend stating restrictions on resale and transferability, and indicate the securities have not been registered
Solicitation	Generally, no general solicitation	No general solicitation	No general solicitation
Filing of Notice	10 days <i>prior</i> to first sale in Washington	15 days <i>after</i> first sale in State of Washington	15 days <i>after</i> first sale in State of Washington
Disclosure Requirements	None required.	For sales to accredited investors, none specified (though Rule 502 recommends providing information below to accredited investors as well non-accredited investors) For sale to non -accredited investors:	

	504	505	506
			<ul style="list-style-type: none"> a. Any written information provided to accredited investors; b. Non-financial: Either (i) if the issuer is eligible to use Regulation A (17 CFR §§ 230.251-263), the type of information required in Part II of Form 1-A or (ii) the same type information required in Part I of a registration statement filed under the Federal Securities Act; c. Financial: Generally requires at least an audited financial statements (at least an audited balance sheet) <ul style="list-style-type: none"> ▪ Offerings up to \$2,000,000 – see Rule 502(2)(B)(1) ▪ Offerings up to \$7,500,000 – see Rule 502(2)(B)(2) ▪ Offerings over \$7,500,000 - see Rule 502(2)(B)(3) d. Advise purchaser of limitations on resale. e. Opportunity to ask questions and receive answers
<i>All issuers must comply with anti-fraud provisions of federal & state securities laws</i>			

Accredited Investor

WAC 460-44A-501(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 excluding the value of the primary residence of such natural person;

(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

NOTE: Per Interpretive Statement 23 (adopted Jan. 2011): The Securities Administrator interprets the definition of "accredited investor" as it pertains to natural persons in WAC 460-44A-501(1)(e) to exclude the amount of indebtedness secured by the primary residence of the investor up to its fair market value. Any indebtedness secured by a natural person's primary residence that is in excess of the fair market value of the residence shall be considered a liability and deducted from the person's net worth.

<http://www.dfi.wa.gov/sd/securitiesinterpretive.htm#is-23>

17 CFR § 230.502 General Conditions To Be Met.

The following conditions shall be applicable to offers and sales made under Regulation D (§§230.501–230.508):

(a) *Integration.* All sales that are part of the same Regulation D offering must meet all of the terms and conditions of Regulation D. Offers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of that Regulation D 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 Regulation D, other than those offers or sales of securities under an employee benefit plan as defined in rule 405 under the Act (17 CFR 230.405).

Note: The term *offering* is not defined in the Act or in Regulation D. If the issuer offers or sells securities for which the safe harbor rule in paragraph (a) of this §230.502 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. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Regulation S. See Release No. 33–6863.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under Regulation D:

- (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 being received; and
- (e) Whether the sales are made for the same general purpose.

See Release 33–4552 (November 6, 1962) [27 FR 11316].

(b) *Information requirements* —(1) *When information must be furnished.* If the issuer sells securities under §230.505 or §230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells securities under §230.504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws.

(2) *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 Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business and the securities being offered:

(A) *Non-financial statement information.* If the issuer is eligible to use Regulation A (§230.251–263), the same kind of information as would be required in Part II of Form 1–A (§239.90 of this chapter). If

the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) *Financial statement information* —(1) *Offerings up to \$2,000,000.* The information required in Article 8 of Regulation S–X (§210.8 of this chapter), except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(2) *Offerings up to \$7,500,000.* The financial statement information required in Form S–1 (§239.10 of this chapter) for smaller reporting companies. 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.

(3) *Offerings over \$7,500,000.* The financial statement as would be required in a registration statement filed under the Act 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.

(C) If the issuer is a foreign private issuer eligible to use Form 20–F (§249.220f of this chapter), the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i) (B) (1), (2) or (3) of this section, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information specified in paragraph (b)(2)(ii)(A) or (B) of this section, and in either event the information specified in paragraph (b)(2)(ii)(C) of this section:

(A) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of Rules 14a–3 or 14c–3 under the Exchange Act (§240.14a–3 or §240.14c–3 of this chapter), the definitive proxy statement filed in connection with that annual report, and if requested by the purchaser in writing, a copy of the issuer's most recent Form 10–K (§249.310 of this chapter) under the Exchange Act.

(B) The information contained in an annual report on Form 10–K (§249.310 of this chapter) under the Exchange Act or in a registration statement on Form S–1 (§239.11 of this chapter) or S–11 (§239.18 of this chapter) under the Act or on Form 10 (§249.210 of this chapter) under the Exchange Act, whichever filing is the most recent required to be filed.

(C) The information contained in any reports or documents required to be filed by the issuer under sections 13(a), 14(a), 14(c), and 15(d) of the Exchange Act since the distribution or filing of the report or registration statement specified in paragraphs (b)(2)(ii) (A) or (B), and a brief description of the

securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished.

(D) If the issuer is a foreign private issuer, the issuer may provide in lieu of the information specified in paragraph (b)(2)(ii) (A) or (B) of this section, the information contained in its most recent filing on Form 20-F or Form F-1 (§239.31 of the chapter).

(iii) Exhibits required to be filed with the 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 or her written request, a reasonable time before his or her 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 §230.505 or §230.506, 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 §230.505 or §230.506 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 paragraph (b)(2) (i) or (ii) of this section.

(vi) For business combinations or exchange offers, in addition to information required by Form S-4 (17 CFR 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 Exchange Act may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with paragraph (b)(2)(i) of this §230.502.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under §230.505 or §230.506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(c) *Limitation on manner of offering.* Except as provided in §230.504(b)(1), 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:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising; *Provided, however,* that publication by an issuer of a notice in accordance with §230.135c or filing with the Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form,

shall not be deemed to constitute general solicitation or general advertising for purposes of this section; *Provided further*, that, if the requirements of §230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(d) *Limitations on resale.* Except as provided in §230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care may be demonstrated by the following:

- (1) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;
- (2) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Act and, therefore, cannot be resold unless they are registered under the Act or unless an exemption from registration is available; and
- (3) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Act and setting forth or referring to the restrictions on transferability and sale of the securities.

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, §230.502(b)(2)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

RCW 21.20.310 Securities Exempt From Registration

RCW [21.20.140](#) through [21.20.300](#), inclusive, and [21.20.327](#) do not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsection (7) or (8) of this section: PROVIDED, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsection (7) or (8) of this section.

(3) 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, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or insured or guaranteed by, any insurance company authorized to do business in this state.

(6) 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.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (b) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (c) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; and equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security which meets the criteria for investment grade securities that the director may adopt by rule.

(9) Any prime quality negotiable commercial paper not intended to be marketed to the general public and not advertised for sale to the general public that is of a type eligible for discounting by federal reserve

banks, that arises out of a current transaction or the proceeds of which have been or are to be used for a current transaction, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(10) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if: (a) The plan meets the requirements for qualification as a pension, profit sharing, or stock bonus plan under section 401 of the internal revenue code, as an incentive stock option plan under section 422 of the internal revenue code, as a nonqualified incentive stock option plan adopted with or as a supplement to an incentive stock option plan under section 422 of the internal revenue code, or as an employee stock purchase plan under section 423 of the internal revenue code; or (b) the director is notified in writing with a copy of the plan thirty days before offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW [84.36.800](#)(4) exclusively for religious, educational, fraternal, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States, which 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 a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days: PROVIDED, That no offerings may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW [21.20.340](#)(11) as now or hereafter amended.

The notice shall consist of the following:

- (a) The name and address of the issuer;
- (b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;
- (c) A short description of the security, price per security, and the number of securities to be offered;
- (d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;
- (e) A statement of the proposed use of the proceeds of the sale of the security; and
- (f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "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."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the

state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW [48.38.010](#).

RCW 21.20.320 Exempt Transactions

The following transactions are exempt from RCW [21.20.040](#) through [21.20.300](#) and [21.20.327](#) except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.

(2) Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 pursuant to any rule adopted by the director.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chattels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) 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, or to a broker-dealer, whether the purchaser is acting for itself

or in some fiduciary capacity.

(9) Any transaction effected in accordance with the terms and conditions of any rule adopted by the director if:

(a) The aggregate offering amount does not exceed five million dollars; and

(b) The director finds that registration is not necessary in the public interest and for the protection of investors.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW [21.20.040](#), acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of

this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, transfer to an existing member or person who will become a member, or transfer by gift to any person organized and operated as a nonprofit organization as defined in RCW [84.36.800](#)(4) that also possesses a current tax exempt status under the laws of the United States, and, in the case of an instrument, so states conspicuously on its face.

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson.