



**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

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**441-810-0060** Assumed Business Name

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 11**

**GENERAL PROVISIONS**

**441-011-0010**

**Definitions**

- (1) The words and phrases used in Divisions 011 through 325 have the meaning given them in ORS 183.310.
- (2) "Director" means the director of the Department of Consumer and Business Services.
- (3) "Department" means the Department of Consumer and Business Services.
- (4) "Person" includes individuals, partnerships, corporations, associations, firms, and joint stock companies.

Stat. Auth.: ORS Ch. 69.285 & 183

Stats. Implemented: ORS 59.015

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0010; FCS 4-1990, f. & cert. ef. 8-21-90

**441-011-0020**

**Waiver by the Director**

The Director may, either upon request or upon the Director's motion, waive or modify the application of any particular rule to a particular person when, in the Director's opinion just and reasonable cause exists for such action and the waiving or modifying of such rule would not be contrary to the provisions of the Oregon Securities Law, Oregon Commodities Law, Oregon Franchise Law or to the public interest.

Stat. Auth.: ORS Ch. 59.285

Stats. Implemented: ORS 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0206; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0210; FCS 4-1990, f. & cert. ef. 8-21-90

**441-011-0030****Mailing List**

(1) A person shall request placement on the Department of Consumer and Business Services mailing list and pay an initial fee of \$30 and an annual renewal fee of \$30 on or before January 1 of each year thereafter to receive the following:

- (a) Proposals to adopt, amend, or repeal rules;
- (b) Adopted rules;
- (c) Legislation initiated by the Director (initial bill only); and
- (d) Enacted legislation effecting the statutes administered by the Director.

(2) All persons who have not paid the renewal fee by the due date shall be removed from the mailing list.

(3) The fee provisions of this rule shall not apply to:

- (a) Persons listed in OAR 441-013-0040;
- (b) Governmental agencies; or
- (c) Persons who establish to the satisfaction of the Director that extreme financial hardship would result from the payment required by section (1) of this rule.

Stat. Auth.: ORS Ch. 69.285 & 183

Stats. Implemented: ORS 183.335

Hist.: CC 15-1986, f. & ef. 9-25-86; Renumbered from 815-005-0020; FCS 4-1990, f. & cert. ef. 8-21-90

**441-011-0040****Financial Statements**

(1) All financial statements required by any rule or official form of the Department of Consumer and Business Services shall be prepared in accordance with generally accepted accounting principles. Financial statements prepared in accordance with the requirements of the Securities and Exchange Commission shall satisfy this requirement.

(2) Unless otherwise accepted by the Director or specified by rule, order, or form, the financial statements shall include a current Statement of Financial Position (Balance Sheet); current Statement of Operations (Profit and Loss Statement); and a current Statement of Changes in Financial Position (Source and Application of Funds Statement) for each of the two fiscal years preceding the date of the balance sheet, and for the period, if any between the close of the last fiscal year and the date of the balance sheet. As a general guideline, financial statements as of a date within 90 days prior to the date of filing shall be deemed to be current.

(3) An application for registration of securities pursuant to ORS 59.065, other than interests in a limited partnership shall include audited financial statements in the following cases:

- (a) All offerings of securities in which the aggregate offering price exceeds \$500,000;

(b) All offerings of bonds, notes, evidence of indebtedness, preferred stock or other securities requiring fixed or contingent periodic payments or amortization, where the aggregate offering price exceeds \$100,000.

(4) In the case of an application for registration of interest in a limited partnership pursuant to ORS 59.065, the following requirements shall apply:

(a) If one or more of the general partners is a corporation, audited financial statements of such corporate general partner(s) will be required if the aggregate offering price of the subject application exceeds \$100,000 and such corporation has been the general partner of three or more registered limited partnerships;

(b) If one or more of the general partners is an individual, the application for registration shall include a statement by an independent public accountant as to the net worth of such general partner(s) in a form acceptable to the Director;

(c) Where the limited partnership has both a corporate general partner and an individual general partner the corporate general partner(s) must comply with subsection (a) of this section and the individual general partner(s) must comply with subsection (b) of this section.

(5) In the case of limited partnerships, the financial statements required by these rules or any other rule or order of the Director shall state in detail the terms of the following arrangements, if applicable:

(a) If the issuer contemplates transacting or has transacted business with any person in an amount equaling twenty percent of the total dollar value of securities offered;

(b) If a general partner is permitted to or contemplates that the general partner will sell services, supplies, equipment, furnishings or other property to the issuer or an affiliate:

(A) The financial statements should disclose the gross expenditures by the issuer or its affiliates to each person in connection with the arrangements described above;

(B) The prospectus or offering circular for the current offering of the issuer must disclose the gross receipts by each person involved in the arrangements described above from all prior limited partnership offerings.

(6) The Director may require, or waive the requirement for audited financial statements under these rules if the Director finds such requirement or waiver is for the protection of investors and in the public interest.

Stat. Auth.: ORS Ch. 69.285

Stats. Implemented: ORS 59.285

Hist.: CC 29, f. 4-13-76, ef 4-16-76; Renumbered from 815-030-0215; FCS 4-1990, f. & cert. ef. 8-21-90

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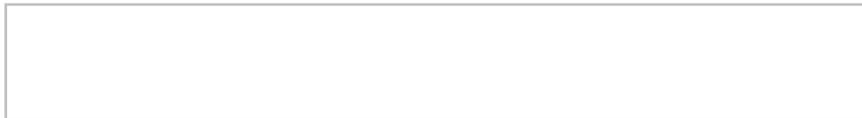
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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 12**

**ACCESS TO PUBLIC RECORDS, FEES FOR RECORD SEARCH, COPIES OF PUBLIC RECORDS AND  
REFUNDS**

**441-012-0005**

**Applicability of Rule**

OAR 441-012-0001 to 441-012-0050 apply to all public records of the Securities Section of the Department of Consumer and Business Services and govern the application of ORS Chapters 59, 645, and ORS 650.005 through 650.085 to these records.

Stat. Auth.: ORS Ch. 59, 293, 645 & 650

Stats. Implemented: ORS 192.410(4)

Hist.: FSC 4-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; FSC 7-1989, f. 8-30-89, cert. ef. 9-1-89

**441-012-0010**

**Access to Records**

(1) The Director, in carrying out responsibilities as custodian of public records under ORS Chapters 59, 645 and ORS 650.005 through 650.085, shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Department's duties.

(2) Public records of the Securities Section may be inspected or examined during the normal working days and hours of the Securities Section. The inspection or examination shall take place at the main office or any other reasonable location designated by the Director.

(3) Access to and disclosure of the public records are subject to ORS 192.410 to 192.505, 697.732, 706.720, 722.419 and 731.264.

Stat. Auth.: ORS Ch. 59, 293, 645 & 650

Stats. Implemented: ORS 192.430

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0111; FSC 4-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; FSC 7-1989, f. 8-30-89, cert. ef. 9-1-89

## **441-012-0020**

### **Requests to Inspect or Obtain Copies of Public Records**

A request to inspect or obtain copies of a public record or information from public records shall be made in writing or in person, and shall include:

- (1) The name, address or telephone number of the requester, except as considered unnecessary by the Director;
- (2) An identification of the needed public record, or of the type and format of needed public record information, if known to the requester; and
- (3) The number of copies requested of the record, if copies are requested.

Stat. Auth.: ORS Ch. 59, 293, 645 & 650

Stats. Implemented: ORS 192.430

Hist.: CC 15, f. 1-11-74, ef. 2-11-74; CC 6-1985, f. & ef. 5-3-85; Renumbered from 815-010-0001; FSC 4-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; FSC 7-1989, f. 8-30-89, cert. ef. 9-1-89

## **441-012-0030**

### **Payment for Inspection and Copies of Public Records**

- (1) A person who is receiving a copy of a public record or information from a public record shall pay for the Department's actual cost for:
  - (a) Staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requester;
  - (b) Producing the copy or the information; and
  - (c) Other supplies or services necessary to furnish the copy or information.
- (2) The Director may reduce or waive payment of the fee for access to a public record if the Director determines that the reduction or waiver will aid the effective administration of Department operations.
- (3) The Director shall not require payment of fees for the first copy of publications, statutes, or administrative rules from public libraries, public educational institutions or from a federal, state, county or city agency participating in a cooperative program with the Department.
- (4) The requester shall pay all fees for access to a public record in advance unless later payment is approved by the Director.

Stat. Auth.: ORS Ch. 59.285, 293.445, 645.205 & 650.050

Stats. Implemented: ORS 192.440

Hist.: FSC 4-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; FSC 7-1989, f. 8-30-89, cert. ef. 9-1-89; FCS 1-1990, f. 4-30-90, cert. ef. 5-1-90

**441-012-0040****Fees and Miscellaneous Charges**

The Director establishes fees and miscellaneous charges as follows:

- (1) Copies of records:
  - (a) Copies made on a standard office copy machine, 25 cents per page;
  - (b) Copies of microfilm, 25 cents for each image;
  - (c) Copies of existing mailing lists, \$5 per 100 names, with no additional charge for staff time;
  - (d) Copies of video tapes, \$10 per tape.
- (2) Certification of documents, \$3. This fee is in addition to fees listed under section (1) of this rule.
- (3) Staff time in excess of one hour required to locate, produce, summarize or otherwise provide records:
  - (a) Secretarial/clerical, \$16 per hour, \$4 per quarter hour;
  - (b) Professional/technical, \$29 per hour, \$7.25 per quarter hour.
- (4) Computer processing charges:
  - (a) Actual Executive Department charge for the job;
  - (b) Actual charge computed for in-house mini computer;
  - (c) Programmer/analyst and secretarial support time at rates indicated under section (3) of this rule.
- (5) Other documents:
  - (a) Administrative Rules and Oregon Revised Statutes:
    - (A) Companies or individuals regulated by the administrative rules and bulletins requested, first copy free;
    - (B) Additional copies of rules, \$3 per set;
    - (C) Additional copies of Oregon Revised Statutes 59, 645, or 650, \$3 per chapter.
  - (b) Mailing list for Corporate Securities Statutes and Rules, pursuant to OAR 441-011-0030:
    - (A) Initial fee-placement on mailing list, \$30;
    - (B) Annual renewal fee, \$30.
- (6) The Director shall charge the actual cost for other materials not specifically identified in this rule.

Stat. Auth.: ORS Ch. 59.285, 293.445, 645.205 & 650.050

Stats. Implemented: ORS 192.440

Hist.: FSC 4-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; FSC 7-1989, f. 8-30-89, cert. ef. 9-1-89; FCS 1-1990, f. 4-30-90, cert. ef. 5-1-90

## 441-012-0050

### Refund of Monies

(1) This rule pursuant to ORS 293.445 provides for the refund of monies paid in excess of the amount legally due to the Department of Consumer and Business Services pursuant to ORS Chapter 59, 645 and 650.

(2) The Director shall not refund monies paid in excess of the amount legally due to the Department if the amount is \$10 or less, unless a refund is requested in writing by the applicant or the applicant's legal representative. However, the Director shall not make refunds unless the request is received within three years after the date payment is received by the Department.

Stat. Auth.: ORS Ch. 59.285, 293.445, 645.205 & 650.050

Stats. Implemented: ORS 192.440

Hist.: FSC 4-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; FSC 7-1989, f. 8-30-89, cert. ef. 9-1-89; FCS 1-1990, f. 4-30-90, cert. ef. 5-1-90

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 13**

**RULEMAKING**

**441-013-0020**

**Periodic Review of Rules**

- (1) The Director shall review and analyze all Department rules at least once every three years including rules reviewed during prior reviews and rules adopted after the last review.
- (2) As part of the review, the Director shall invite public comment on the rules by giving notice pursuant to ORS 183.335(1).
- (3) The notice shall identify the rules under review by number and subject matter.
- (4) The notice shall state that the Director invites written comments concerning continued need for the rule; the complexity of the rule; the extent to which the rule duplicates, overlaps, or conflicts with other state rules, federal regulations, and local government regulations, the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule; the rule's potential for enhancement of job-producing enterprises; and the legal basis for the rule.
- (5) The notice shall state the date by which written comments must be received and the address to which the comments should be sent.
- (6) If the Director provides a public hearing to receive oral comments on the rules, the notice shall include the time and place of the hearing.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.545

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0085

**441-013-0030**

### **Petition to Adopt, Amend, or Repeal Rule: Contents of Petition, Filing of Petition**

(1) An interested person may petition the Director to adopt, amend, or repeal a rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain:

(a) The rule the petitioner requests the Director to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When amendment of an existing rule is sought, the affected portion of the rule shall be set forth in the petition in full with matter proposed to be deleted bracketed and matter proposed to be added underlined or shown in boldface;

(b) Facts or arguments in sufficient detail to show reasons for adoption, amendment, or repeal of the rule;

(c) All propositions of law asserted by petitioner;

(d) Sufficient facts to show the effect of adoption, amendment, or repeal of the rule; and

(e) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed.

(2) The petition shall be deemed filed when received at the Department.

(3) Upon receipt of the petition, the Director:

(a) May provide a copy of the petition and a copy of OAR Chapter 441, Division 013 to all persons named in the petition;

(b) May schedule oral presentations; and

(c) Shall within 30 days after the date of submission of the petition, either deny the petition in writing or initiate rulemaking proceedings in accordance with OAR Chapter 441, Division 013.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.390

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0070

### **441-013-0040**

#### **Notice of Intent to Adopt, Amend or Repeal Rules**

Prior to the adoption, amendment, or repeal of any rule under ORS Chapters 59, 645, or 650, the Director shall give notice of the proposed adoption, amendment, or repeal at least 15 days prior to the effective date:

(1) By placing a notice in the Secretary of State's Bulletin referred to in ORS 183.360.

(2) By mailing a copy of the notice to persons on the Department mailing list established pursuant to ORS 183.335(7) and OAR 441-011-0030.

(3) By mailing a copy of the notice to the following persons and publications:

(a) Oregon State Bar Bulletin;

(b) Capitol Press Room;

- (c) Chairperson of the Executive Committee of the Securities Section of the Oregon State Bar;
- (d) Chairperson of the Executive Committee of the Business Law Section of the Oregon State Bar;
- (e) Chairperson of the Executive Committee of the Patent and Trademark Section of the Oregon State Bar;
- (f) Commerce Clearing House, Inc. (Blue Sky Law Reporter and Franchise Law Reports);
- (g) North American Securities Administrators Association;
- (h) Securities Industries Association;
- (i) Securities Traders Association;
- (j) National Association of Securities Dealers, Inc.;
- (k) International Association of Financial Planners;
- (l) Institute for Certified Financial Planners;
- (m) Mortgage Brokers Association of Oregon; and
- (n) International Franchise Association.

Stat. Auth.: ORS Ch. 59.285 & 183

Stats. Implemented: ORS 183.335

Hist.: CC 15-1986, f. & ef. 9-25-86; Renumbered from 815-005-0010; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-013-0050**

### **Temporary Rules**

(1) If the Director has not given notice before adopting a temporary rule, the Director shall give copies of the temporary rule and the statements required under ORS 183.335(5) to persons, entities, and media specified under ORS 183.335(1). If a temporary rule or rules are over ten pages in length, the Director may summarize the rule and state where a copy of the rule may be obtained. Failure to give notice shall not affect the validity of any rule.

(2) A temporary rule is effective for 180 days unless a shorter period is specified in the rule.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.335

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0080

## **441-013-0060**

### **Limitation of Economic Effect on Small Businesses**

(1) Based upon the Director's economic effect analysis or upon comments made in response to the Director's rulemaking notice, the Director shall, before adoption of a rule, determine whether the economic effect upon small business is

significantly adverse.

(2) If the Director determines there is a significant adverse effect, the Director shall, as provided in ORS 183.540, limit the rule's economic impact on small business to the extent consistent with the public health and safety purposes of this rule.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.540 & 183.545

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0020

## **441-013-0070**

### **Conduct of Hearing**

(1) A hearing to consider a rule shall be conducted by and shall be under the control of a presiding officer who may be the Director or any other person the Director designates.

(2) If the presiding officer or Director has a potential conflict of interest as defined in ORS 244.020(8), that officer shall comply with the requirements of ORS 244.120 and 244.130.

(3) At the commencement of the hearing, any person wishing to be heard shall provide name, address, and affiliation to the presiding officer. Additional persons may be heard at the discretion of the presiding officer. The presiding officer may provide a form for witnesses to state their names, whether the witness favors or opposes the proposed action, and such other information as the presiding officer may deem appropriate.

(4) At the commencement of the hearing, the presiding officer may summarize the content of the notice provided pursuant to ORS 183.335, unless requested by a person present to read the notice in full.

(5) Subject to the discretion of the presiding officer, the order of the presentation shall be:

(a) Statement of proponents;

(b) Statement of opponents; and

(c) Statement of any other witness present and wishing to be heard.

(6) The presiding officer or the Director may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.

(7) There shall be no rebuttal or additional statements given by any witness unless permitted by the presiding officer.

(8) The presiding officer may continue the hearing.

(9) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Each exhibit shall be marked and shall identify the witness offering the exhibit. The Director shall preserve written exhibits pursuant to any applicable retention schedule under ORS 192.001 *et seq.*

(10) All persons who signed up to testify may testify. However, the presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(11) The presiding officer may expel a person from a proceeding if the person engages in conduct that disrupts the proceeding.

(12) The presiding officer may provide for a verbatim record of all proceedings or may provide for a record in the form of minutes.

Stat. Auth.: ORS Ch. 59.285 & 183

Stats. Implemented: ORS 183.335

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0030; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-013-0080**

##### **Presiding Officer's Report**

Upon the Director's request, the presiding officer shall, within a reasonable time after the hearing, provide the Director with the minutes or a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations or exhibits. The presiding officer may make recommendations, but such recommendations are not binding upon the Director.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.335

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0040

#### **441-013-0090**

##### **Director's Action**

At the conclusion of the hearing, or after receipt of the presiding officer's report and recommendation, if any, the Director may adopt, amend, or repeal rules covered by the notice of intended action. The Director shall fully consider all written and oral submissions.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.335

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0050

#### **441-013-0100**

##### **Notice of Director's Action; Certification to Secretary of State**

(1) The Director shall file with the Secretary of State a certified copy of each rule adopted, including rules that amend or repeal any rule.

(2) The rule shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or a later effective date is specified in the rule.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.335

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-001-0060

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 14**

**CONTESTED CASES**

**441-014-0010**

**Notice**

In addition to the requirements of ORS 183.415(2), an order may designate the material which shall be the evidentiary record of the case upon default.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 59.295, 183.415 & 183.450

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0005

**441-014-0020**

**Rights of Parties in Contested Cases**

In addition to information required to be given under ORS 183.413(2) and 183.415(7), before commencement of a contested case hearing, the Director shall inform each party in writing that:

- (1) If the party does not desire self-representation, the party must be represented by an attorney.
- (2) If the party is an agency, corporation, or an unincorporated association, the party must be represented by an attorney.
- (3) The attorney must be licensed in Oregon, provided however, that if the attorney is not licensed in Oregon but is licensed in another jurisdiction the attorney may appear if the Director approves.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.413 & 183.415

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0010; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0030**

### **Informal Disposition**

If the parties agree, informal disposition may be made of any contested case in any way and by any means other than binding arbitration.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.415

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0020

## **441-014-0040**

### **Requests by Persons to Participate as Party or Limited Party**

(1) The Director shall give persons who have an interest in the outcome of a contested case hearing or who represent a public interest in the outcome the opportunity to participate as parties or limited parties.

(2) A person desiring to participate as a party or a limited party shall file a petition with the Director with sufficient copies for service on all parties at least 14 days before the date set for hearing. Petitions filed untimely shall not be considered unless the Director determines that the petitioner has shown good cause for failure to file timely.

(3) The petition shall include:

(a) Name and address of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how the results of the proceeding may affect such interest;

(e) If the petitioner seeks to represent a public interest in the outcome of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interests identified in subsection (3)(d) or (e) of this rule.

(4) The Director shall serve a copy of the petition on each party. Each party shall have seven days from the date of service to file a response to the petition.

(5) If the Director determines that good cause has been shown for failure to file a timely petition, the Director may:

(a) Shorten the time within which answers to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(6) If the Director allows the petitioner to participate as a party or a limited party, the Director may postpone or continue the hearing if it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.

(7) In ruling on petitions to participate as a party or a limited party, the Director shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the Director's jurisdiction;

(c) The qualifications the petitioner represents in cases in which a public interest is alleged; and

(d) The extent to which the petitioner's interest will be represented by existing parties.

(8) The Director may treat a petition to participate as a party as a petition to participate as a limited party.

(9) The Director has discretion to grant petitions for persons to participate as a party or a limited party. The Director shall specify areas of participation and procedural limitations as the Director deems appropriate.

(10) The Director's ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. The Director shall also serve petitioner with the notice of rights required by ORS 183.413(2).

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.310 & 173.413

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0030

#### **441-014-0050**

##### **Requests by Agencies to Participate as a Party or an Interested Agency**

(1) When the Director gives notice of an action that can result in a contested case hearing, the Director may name any other agency that has an interest in the outcome of that action as a party or as an interested agency, either on the Director's own initiative or upon request by that other agency.

(2) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices, including notice of rights, as any party in the proceeding.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.060, 183.310 & 183.413

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0040

#### **441-014-0060**

##### **Immediate Suspension or Refusal to Renew a Registration or License: Notice of Opportunity for Hearing, Service**

- (1) If the Director finds a serious danger to the public health or safety, the Director may suspend or refuse to renew a registration or license without hearing.
- (2) The Director shall serve the registrant or licensee with an order which includes:
  - (a) The statements required under ORS 183.415(2) and (3);
  - (b) The effective date of the suspension or refusal to renew the registration or license;
  - (c) A statement that any demand for a hearing must be received within 90 days of the date of the order or the right to hearing is waived; and
  - (d) A statement setting forth specific reasons for the finding that a serious danger to the public health and safety exists.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.430

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0050; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0070**

### **Contested Case Hearings**

- (1) The contested case hearing shall be conducted by and under the control of the presiding officer who may be the Director or any other person the Director designates.
- (2) If the presiding officer or the Director has a potential conflict of interest as defined in ORS 244.020(8), that officer shall comply with the requirements of ORS 244.120 and 244.130.
- (3) Subject to the discretion of the presiding officer, the hearing shall be conducted to include the following:
  - (a) The statement and evidence of the Director in support of the action;
  - (b) The statement and evidence of all other parties; except that limited parties may address only subjects within the area to which they have been limited;
  - (c) Rebuttal evidence; and
  - (d) Closing arguments.
- (4) The presiding officer or the Director, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the Director.
- (5) The presiding officer may continue the hearing.
- (6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.
- (7) The presiding officer may expel a person from a proceeding if the person engages in conduct that disrupts the proceeding.
- (8) The exhibits shall be marked and main-tained as part of the record of proceedings.

(9) If the presiding officer or Director receives any ex parte communication on a fact in issue during the contested case hearing, the presiding officer or Director shall notify all parties and otherwise comply with the requirements of OAR 441-014-0100.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.415

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0060; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0080**

### **Evidence in Contested Cases**

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Evidence admissible under this section includes:

(a) All evidence admissible in a civil case under the Oregon Rules of Evidence;

(b) Hearsay evidence unless the presiding officer determines that a party would be unduly prejudiced or injured by lack of cross-examination; and

(c) Certificates issued by the Director; certified copies of documents, orders, and entries filed or received at the Department; the Director's certificate as to the compliance or non-compliance of a document with provisions of law administered by the Director; and the Director's certificate of existence or non-existence of facts which would appear from the presence or absence of documents.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made as part of the order issued.

Stat. Auth.: ORS Ch. 59 & 183

Stats. Implemented: ORS 183.450

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0070

## **441-014-0090**

### **Optional Procedure for Determining Objections to Evidence**

(1) Any party wishing to introduce into evidence any affidavit, certificate, or other document without calling the declarant or custodian as a witness may serve upon every other party a copy of such document at least ten days prior to the hearing.

(2) If any party wishes to cross-examine the declarant or custodian, the party must give notice to the party proposing to offer the document at least five days prior to the hearing. If the party fails to do so, the document shall be received.

(3) If the declarant or custodian is not present for cross-examination after a request pursuant to section (2) of this rule,

the presiding officer may still receive the document into evidence unless the presiding officer determines that the party requesting cross-examination would be prejudiced or injured by lack of cross-examination.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.425

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0080

#### **441-014-0100**

##### **Ex Parte Communications**

(1) An ex parte communication is any oral or written communication to the Director or the presiding officer made out of the presence of all parties concerning a fact in issue.

(2) If the Director or presiding officer receives an ex parte communication during review of the contested case, the Director or presiding officer shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party an opportunity to rebut the substance of the ex parte communication at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.

(3) The Department's record of a contested case proceeding shall include:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The Director's or presiding officer's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.415 & 183.462

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0090

#### **441-014-0110**

##### **Proposed Orders in Contested Cases; Filing of Exceptions and Argument; Adoption of Order**

(1) If the Director has not attended the hearing or reviewed and considered the record, the presiding officer shall serve a proposed order including findings of fact and conclusions of law upon the parties.

(2) When the presiding officer serves a proposed order, the presiding officer shall at the same time notify the parties that:

(a) Written exceptions and argument may be filed within 20 days of the service of the proposed order or within such longer time as the Director may direct;

- (b) Exceptions must identify specifically the findings, conclusion, or determinations to which the party excepts; and
- (c) If no written exceptions are filed, the proposed order will be final as of its date.
- (3) Upon receiving exceptions, the Director may, if the party excepted to specific findings of fact, order a transcript prepared and serve it on the party.
- (4) A party has 14 days upon receipt of the transcript to request corrections to the transcript and to submit written argument in support of the exceptions.
- (5) If the Director does not order a transcript, the party has seven days from filing of the exceptions to submit written argument to the Director unless the party submitted argument with the exceptions.
- (6) The Director may extend the time for argument upon a showing of good cause.
- (7) The Director, after receiving exceptions and argument, shall:
  - (a) Issue a final order; or
  - (b) Direct the presiding officer to take additional evidence and make additional findings on issues the Director designates.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.460

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0100

## **441-014-0120**

### **Final Orders**

Final orders on contested cases shall be in writing and shall include:

- (1) Rulings on admissibility of offered evidence when the rulings are not set forth in the record.
- (2) Findings of fact -- Those facts that are either agreed upon or those facts that are determined by the presiding officer on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.
- (3) Conclusion(s) of law -- Applications of the controlling law to the facts found and the legal results arising therefrom.
- (4) An order -- The action taken by the Director as a result of the facts found and the legal conclusions arising therefrom.
- (5) A citation of the statutes under which the order may be appealed.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.470

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0110

## **441-014-0130**

### **Default Orders**

(1) An order is final by default as of the date of the order if a party:

- (a) Fails to request a hearing on an order within the specified time;
- (b) Fails to appear at a specified time and place for a hearing on an order;
- (c) Withdraws a request for hearing on an order; or
- (d) Notifies the Director that the party will not appear at the hearing.

(2) An order that is to become final upon default shall designate or include the evidence constituting the prima facie case. In all cases, the record must contain substantial evidence to support the findings of fact.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.415 & 183.470

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0120

## **441-014-0140**

### **Setting Aside Default Orders**

(1) A party may request a post-order hearing after the time for requesting a hearing has expired upon filing a request and affidavit which:

- (a) Shows the failure to request a hearing was due to mistake, inadvertence, surprise, or excusable neglect; and
- (b) Sets forth a meritorious defense to the matters contained in the order.

(2) The request shall be filed with the Director within 60 days of the expiration of the time for requesting the hearing.

(3) If the Director allows the request, the Director shall enter an order scheduling a post-order hearing. The order does not stay the order which became final on the default. If the request is denied, the Director shall enter an order setting forth the reasons for such denial.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.415 & 183.470

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0130; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0150**

### **Reconsideration and Rehearing**

(1) Unless an order becomes final through default, a party may petition the Director for reconsideration or rehearing of a final order.

- (2) The petition must be filed within 30 days after the date of the order and be served on all parties.
- (3) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by written argument.
- (4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 441-014-0160(2).
- (5) The Director may limit the rehearing to specific matters.
- (6) The Director may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, it shall be deemed denied as provided in ORS 183.482.
- (7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).
- (8) A final order remains in effect during reconsideration or rehearing.
- (9) After reconsidering or rehearing the case, the Director shall enter a new order which may be an order affirming the existing order.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.482

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0140; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0160**

### **Request for Stay**

- (1) Any person who petitions for judicial review of an order may request the Director to stay the enforcement of the order.
- (2) The stay request shall contain:
  - (a) The name of the person filing the request, identifying that person as petitioner and the Director as respondent;
  - (b) The title of the order;
  - (c) The date of the order;
  - (d) A summary of the order;
  - (e) The name of the petitioner and all other parties to the proceeding;
  - (f) The address and telephone number of the petitioner and the address of all other parties to the proceeding except that if the petitioner or a party was represented by an attorney in the proceeding, then the name, address, and telephone number of the attorney shall be provided and the address and telephone number of the petitioner or party may be omitted;
  - (g) A statement advising all parties that they may participate in the stay proceeding before the Director if they file a response in accordance with OAR 441-014-0170 within ten days from service of the stay request on the Director;

(h) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(i) A statement identifying any person, including the public who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, the petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, the petitioner shall propose an amount of bond or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(j) A description of additional procedures, if any, the petitioner believes the Director should follow in determining the appropriateness of the stay request; and

(k) An appendix of affidavits containing all evidence (other than evidence contained in the record of the contested case out of which the stay request arose) upon which the petitioner relies in support of the statements required under subsections (2)(h) and (i) of this rule.

(3) The request must be served on the Director and all parties identified in the request.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.482

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0150

## **441-014-0170**

### **Request for Stay -- Motion to Intervene**

(1) Any party desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The response shall contain:

(a) The title of the decision as it appears on the order;

(b) The name, address, and telephone number of the party filing the response, except that if the party is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the party's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 441-014-0160(2)(h) in the petitioner's stay request;

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (2)(c) and (d) of this rule.

(4) The response must be served on the Director and all parties identified in the stay request within ten days of the date

of service of the stay request.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.482

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0160; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0180**

### **Request for Stay -- Determination**

(1) The Director may allow the petitioner to amend or supplement the stay request to comply with OAR 441-014-0160(2)(a) through (k) or (3). All amendments and supplements shall be served as provided in OAR 441-014-0160(3), and the time for response and Director's action shall be computed from the date of receipt by the Director.

(2) After the time for filing responses, the Director shall:

(a) Rule on the request based on the material before the Director;

(b) Conduct such further proceedings as the Director deems desirable; or

(c) Allow the petitioner within a time certain to submit responsive legal arguments and affidavits to rebut any response. Petitioner may not bring in new direct evidence through such affidavits. The Director may rely on evidence in such affidavits only if it rebuts intervenor evidence.

(3) The Director shall:

(a) Grant the stay request upon a showing of irreparable injury to the petitioner and a colorable claim of error in the order and may impose reasonable conditions, including but not limited to requiring the petitioner to post a bond or other undertaking and to file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time;

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury and a colorable claim of error in the order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the order.

(4) The Director may receive evidence from Department staff concerning the stay request. The evidence shall be presented by affidavit within the time limits imposed by OAR 441-014-0170(4). If there are further proceedings pursuant to subsection (2)(b) of this rule, the staff may present additional evidence in the same manner that parties are permitted to present additional evidence.

Stat. Auth.: ORS 59.285 & Ch. 183

Stats. Implemented: ORS 183.482

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0170; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-014-0190**

### **Time For Proceedings**

(1) Unless otherwise agreed to by the Director, petitioner and respondents, the Director shall commence any proceedings instituted pursuant to OAR 441-014-0180(2)(b) within 20 days after receiving the stay request.

(2) Unless otherwise agreed to by the Director, petitioner and respondents, the Director shall grant or deny the stay request within 30 days after receiving it.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.482

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-003-0180

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 15**

**REQUESTS FOR OPINIONS AND DECLARATORY RULINGS**

**441-015-0010**

**Policy and Procedure Concerning Requests for Opinions and Interpretations**

(1) Definition. For the purpose of this rule a "request for opinion or interpretation" is defined as an informal inquiry requesting confirmation of the existence of an exemption, requesting interpretation or advice on the applicability of the Oregon Securities Law, the Oregon Commodities Law or Oregon Franchise Law.

(2) Policy:

(a) In general. The intent of this rule is to formalize the opinion procedures in order that the requests for opinions can be handled expeditiously.

(b) Type of response. Responses to requests for opinions will be limited to:

(A) Notice that the Director takes the position that further action is not required;

(B) Notice that the Director takes the position that further action is required;

(C) Notice that the Director declines to take a position; or

(D) A modification of the foregoing where necessary for clarity.

(c) Limitations:

(A) Responses will only be in writing and will be based upon representations made;

(B) The Director reserves the right to change a position if additional facts or circumstances exist which warrant a change;

(C) No position will be taken where litigation is pending or is threatened or where the questions are asked after the fact;

(D) Questions requiring significant additional research will be declined;

(E) Notice is given that responses by the Director do not constitute a rule or order. The response has no binding effect on any court or third party.

(3) Procedures for requesting opinions. All opinions and requests for interpretations must:

(a) Be in writing, addressed to the Department of Consumer and Business Services, Corporate Securities, Labor and Industries Building, Salem, OR 97310;

(b) Concisely state the question or show all operative facts including the reason why the opinion is requested; and

(c) Contain an analysis of the applicable law.

Stat. Auth.: ORS Ch. 59.285

Stats. Implemented: ORS 183.310(8)

Hist.: CC 8-1982, f. 4-5-82, ef. 4-15-82; Renumbered from 815-030-0002; FCS 4-1990, f. & cert. ef. 8-21-90

## **441-015-0020**

### **Requests for Opinions and Interpretations**

(1) Any person may request the Director to issue an opinion with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Director.

(2) Persons requesting opinions on the applicability of the securities laws (ORS Chapter 59), the commodities laws (ORS Chapter 645), or the franchise laws (ORS Chapter 650), shall follow the procedures set forth in OAR 441-015-0010.

(3) The Director may opine or decline to opine.

(4) Opinions rendered under the securities laws (ORS Chapter 59), the commodities laws (ORS Chapter 645), or the franchise laws (ORS Chapter 650), are binding on the Director and the requestor on the state of facts presented unless altered or set aside by a court.

(5) Any party dissatisfied with an opinion may petition the Director for a declaratory ruling under OAR 441-015-0030 to 441-015-0080.

Stat. Auth.: ORS Ch. 59.285 & 183

Stats. Implemented: ORS 183.310(8)

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0005; FCS 4-1990, f. & cert. ef. 8-21-90

### **Declaratory Ruling**

## **441-015-0030**

### **Petition for Declaratory Ruling: Contents of Petition**

The petition to institute proceedings for a declaratory ruling shall be in writing and contain:

- (1) The rule or statute that may apply to the person, property, or state of facts.
- (2) A detailed statement of the relevant facts, including sufficient facts to show petitioner's interest.
- (3) All propositions of law or contentions asserted by petitioner.
- (4) The questions presented.
- (5) The specific relief requested.
- (6) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0010

#### **441-015-0040**

##### **Filing and Service of Petition**

- (1) The petition shall be deemed filed when received by the Director.
- (2) Within 60 days after the petition is filed, the Director shall notify the petitioner whether the Director will issue a ruling.
- (3) The Director may decide not to issue a declaratory ruling in any specific instance.

Stat. Auth.: ORS Ch. 59.285 & 183

Stats. Implemented: ORS 183.410

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0020; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-015-0050**

##### **Contents of Notice of Hearing**

- (1) If the Director decides to issue a ruling, the Director shall give a copy of the petition and OAR 441-015-0010 through 441-015-0080 and notice to all persons named in the petition.
- (2) The notice shall state:
  - (a) The time and place of the hearing; and
  - (b) The designation of the presiding officer.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0030

## **441-015-0060**

### **Conduct of Hearing, Briefs, and Oral Argument**

(1) The hearing shall be conducted by and shall be under the control of the presiding officer who may be the Director or any other person the Director designates.

(2) At the hearing, petitioner and any other interested person shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the oral argument. Petitioner, division staff, and interested persons may file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0040

## **441-015-0070**

### **Presiding Officer's Proposed Ruling**

Except when the presiding officer is the Director, the presiding officer shall prepare a proposed ruling in accordance with OAR 441-015-0080 for consideration by the Director.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0050

## **441-015-0080**

### **Director's Decision; Time, Form and Service**

(1) The Director shall issue the declaratory ruling within 60 days after the hearing or within 60 days of the time permitted for the filing of briefs, whichever is later.

(2) The ruling shall be in writing and shall include:

(a) The facts upon which the ruling is based;

(b) The statute or rule in issue;

(c) The Director's conclusion as to the applicability of the statute or rule to those facts;

(d) The Director's conclusion as to the legal effect or result of applying the statute or rule to those facts; and

(e) The reasons relied upon by the Director to support the conclusion.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.410

Hist.: CC 13-1986, f. & ef. 7-8-86; Renumbered from 815-002-0060

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 25**

**SECURITIES EXEMPT FROM REGISTRATION**

**441-025-0010**

**Exchange Exemption**

An exemption is granted pursuant to subsection (4) of ORS 59.025 to the following exchanges:

- (1) Chicago Board Options Exchange.
- (2) Philadelphia Stock Exchange, Inc. only to the extent of securities of issuers who qualify under Tier 1 listing and maintenance requirements of the Exchange.

Stat. Auth.: ORS 59.025(4) & 59.285

Stats. Implemented: ORS 59.025(4)

Hist.: CC 32, f. & ef. 9-1-76; Renumbered from 815-030-0021; FCS 10-1994, f. & cert. ef. 10-3-94

**441-025-0020**

**Manual Exemption**

The following ratings by publishers of securities manuals are approved for the purpose of the exemption from registration in subsection (5) of ORS 59.025:

- (1) Ratings of BBB or better for debt securities, and ratings of F-3 or better for commercial paper by Fitch Investors Service, Inc.
- (2) Ratings of Baa or better for debt securities and ratings of P-3 or better for commercial paper by Moody's Investors Service, Inc.
- (3) Ratings of BBB or better for debt securities and ratings of A-3 or better for commercial paper by Standard and Poor's

Corporation.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025(5)

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; Renumbered from 815-030-0025.5; CC 1-1978, f. & ef. 1-4-78; Renumbered from 815-030-0020; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-025-0030**

##### **Employee Benefit Plans**

Pursuant to ORS 59.025(12), an employee benefit plan is fair, just, and equitable if it is a plan of an employee-owned enterprise as defined in ORS 284.075(1).

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.025(12)

Hist.: FSC 3-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0021.1

#### **441-025-0040**

##### **Charitable Securities**

(1) A person may offer and sell Charitable Remainder Annuity Trusts, Charitable Remainder Unitrusts, and Pooled Income Funds and be exempt from the provisions of ORS 59.055 if:

(a) The person is exempt from federal taxation under the provisions of **Section 501(c)(3)** of the **Internal Revenue Code**; and

(b) The Charitable Remainder Trusts and the Pooled Income Funds qualify under the requirements of **Section 664** or **Section 642** of the **Internal Revenue Code** and all other applicable provisions and regulations thereof.

(2) The Director may by rule or order deny, condition, or withdraw this exemption if, in the Director's opinion, the availability of this exemption to a person would work a fraud or imposition upon the purchaser.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 59.285

Stats. Implemented: ORS 59.025(13)

Hist.: CC 25, f. & ef. 12-5-75; Renumbered from 815-030-0040; FCS 4-1990, f. & cert. ef. 8-21-90

#### **441-025-0045**

##### **Mutual Fund and Unit Investment Trust Notification Procedures**

(1) Pursuant to ORS 59.025(14), a security will be exempt from registration only when this office receives on behalf of

the issuer:

(a) A fully completed Notice of Intention to Sell Securities (Form 440-1945). Multiple portfolios, trusts, or funds that are offered through one prospectus require only one Notice. Separate prospectuses require individual Notices. Prospectuses are not required to be submitted unless requested by staff;

(b) An annual fee of \$350 for open-end management companies or a fee of \$150 for unit investment trusts; and

(c) Appropriate broker-dealer and salesperson license applications and fees. See OAR 441-175-0010 et seq.

(2) Initial filings: Notice and fees submitted as an initial filing will become effective on the date received by this office and will continue for one year from that date.

(3) Renewals:

(a) Notice and fees submitted as a renewal and received by this office prior to the annual anniversary date of the initial filing will become effective on the anniversary date and will continue for one year from that date;

(b) Notice and fees submitted as a renewal and received by this office after the anniversary date will become effective on the date received. A late renewal must be accompanied by a letter indicating whether any sales in this State have been made during the period between the expiration date and the date the renewal is received. A late renewal may be treated as an initial filing.

(4) Amendments: An amendment must be submitted to this office when there is a change of any information contained in the Notice of Intention to Sell Securities. Amendments become effective on the date received by this office but do not require a fee.

(5) Upon receipt of an initial filing or renewal, the Director shall notify the issuer or its representative of the effectiveness of the filing.

[ED. NOTE: The form(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025(14)

Hist.: FCS 5-1990, f. & cert. ef. 8-21-90; Suspended by FCS 2-1997(Temp), f. & cert. ef. 10-6-97

## **441-025-0050**

### **Additional Exempt Employee Benefit Plans**

Pursuant to ORS 59.025(15), securities issued in connection with an employee benefit plan are exempt from registration if the plan:

(1) Is subject to or voluntarily complies with Title 1 of the Employee Retirement Income Security Act of 1974, as amended;

(2) Meets the requirements of **Section 403(b)** of the **Internal Revenue Code**; or

(3) Does not permit employee contributions.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025(15)

Hist.: CC 3, f. 10-2-69, ef. 10-25-69; Renumbered from 815-010-0010; CC 2-1978, f. 6-5-78, ef. 6-10-78; Renumbered from 815-030-0025; FCS 3-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 2-25-88; FCS 4-1990, f. & cert. ef. 8-21-90

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 35**

**SECURITIES TRANSACTIONS EXEMPT FROM REGISTRATION**

**441-035-0010**

**Accredited Investor**

For purposes of ORS 59.035(5) accredited investor includes:

(1) Any bank as defined in Section 3(a)(2) of the Securities Act of 1933 (the "Act"), or any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Act 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 Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940; any small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of Title 1 of the Employee Retirement Income Security Act of 1974 ("ERISA"), if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of ERISA, 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.

(2) Any private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

(3) 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.

(4) 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.

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of the

purchase exceeds \$1,000,000.

(6) 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.

(7) 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 230.506(b)(2)(ii)**.

(8) Any entity in which all of the equity owners are accredited investors.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(5)

Hist.: CC 12-1985(Temp), f. & ef. 11-25-85; CC 1-1987, f. & ef. 2-4-87; FCS 8-1988(Temp), f. & cert. ef. 4-11-88; Renumbered from 815-030-0042; FCS 14-1988, f. & ef. 10-10-88; FCS 5-1990, f. & cert. ef. 8-21-90

## **441-035-0020**

### **Transactions Ineligible Under ORS 59.035(7) Exemption**

The exemption under ORS 59.035(7) is not available if the transaction includes an investment contract. An investment contract may be found in:

- (1) The sale of fractional interests or pooled interests in real paper. Under ORS 59.350(2), a transaction with an entity formed substantially for the purpose of acquiring the real estate paper will be treated as the sale of a fractional interest or pooled investment.
- (2) Any of the following activities by the seller or its affiliates:
  - (a) Selection of the security;
  - (b) Collection of payments due under the securities;
  - (c) Advancement of delinquent payments;
  - (d) Decisions regarding default and foreclosure;
  - (e) Any other activity by the seller whereby management and control is exercised over the investment for the purchaser; or
  - (f) The mortgage broker, broker-dealer, or person described in ORS 59.015(1)(b) guarantees the real estate paper or agrees to buy back or otherwise replace the real estate paper in the event of default.

Stat. Auth.: ORS 59.045(1) & 59.285

Stats. Implemented: ORS 59.035(7) & 59.045(1)

Hist.: FCS 4-1987(Temp), f. 9-24-87, ef. 9-28-87; Renumbered from 815-030-0042.1; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; FCS 16-1988(Temp), f. & ef. 11-21-88; Renumbered from 815-037-0039; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

**441-035-0021****Disclosure Requirements for Real Estate Paper Transactions Exempt Under ORS 59.035(7)**

- (1) All transactions exempt under ORS 59.035(7), involving a mortgage banker or mortgage broker must comply with the provisions of OAR 441-870-0050.
- (2) All transactions exempt under ORS 59.035(7), involving a broker-dealer or person described in ORS 59.015(1)(b) must comply with the provisions of this rule. Compliance does not relieve any person of any other duties and liabilities under the Oregon Securities Law, Oregon Administrative Rules, or any other provision of law.
- (3) For transactions to be exempt under ORS 59.035(7), a broker-dealer or person described in ORS 59.015(1)(b) must provide to the purchaser, prior to the time of sale, a written disclosure document containing the following information:
  - (a) The legal description of the real property underlying the real estate paper being sold;
  - (b) The priority of the lien created by the real estate paper and the total face amount of any senior liens including outstanding taxes; or a current title report on the real property prepared by a title insurance company;
  - (c) The terms of any senior lien and of any assignments thereof, or a copy of the instrument creating the senior lien and any assignments thereof;
  - (d) A statement whether any future advances may have a priority senior to that of the lien created by the real estate paper being sold;
  - (e) In the case of a sale of junior real estate paper, a statement of the risk of loss on foreclosure of a senior lien;
  - (f) A prominent statement of any balloon payments, including the dates payable and the amounts due;
  - (g) A statement of the balance of all taxes owing on the real property underlying the real estate paper, as provided by the county assessor directly or indirectly through a title insurance company;
  - (h) A statement of the value of the real property underlying the real estate paper, based upon the tax assessed value of the property underlying the real estate paper, as provided by the county assessor directly or indirectly through a title insurance company, and:
    - (A) If available, a statement of value based upon an appraisal or an opinion of value prepared by an independent licensed appraiser may also be provided; however
    - (B) Under no circumstances may the statement of value be based upon any source other than the county assessor or an independent licensed appraiser.
  - (i) If the transaction involves existing real estate paper:
    - (A) The debtor's payment record for the lesser of two years immediately preceding the sale or for the period of existence of the real estate paper, covering the existing real estate paper being sold; and
    - (B) If the payment record is less than two years, or the real estate paper being sold is a junior lien, a credit report on the debtor prepared by a credit reporting agency and current within 90 days of the transaction.
  - (j) If the transaction involves real estate paper to be created:
    - (A) The debtor's payment record, if any, for the lesser of two years immediately preceding the sale or for the period of existence of the real estate paper, covering:

- (i) Any lien senior to the real estate paper being created; and
  - (ii) Any lien being retired with the proceeds from the subject sale.
- (B) A credit report on the debtor prepared by a credit reporting agency and current within 90 days of the transaction; and
- (C) A financial statement of the debtor current within 90 days of the transaction.
- (k) If the seller of the real estate paper, the seller's agent, or any affiliate is the debtor, a statement disclosing that fact and the amount of cash paid to the debtor in consideration for the issuance of the real estate paper;
- (l) A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the real estate paper; and
- (m) A statement of whether the purchaser of the real estate paper will be insured against casualty loss.
- (4) The information contained in the written disclosure document described in section (3) of this rule may be provided in summary form except that copies of the tax statement and the appraisal, where applicable, must be true and complete copies of the originals.
- (5) Although not a condition of the availability of the exemption granted pursuant to ORS 59.035(7), all broker-dealers relying on the exemption and this rule shall, pursuant to ORS 59.195, maintain and make available to the Director, or any purchaser involved in the subject transaction, a separate file for each transaction. Each file shall be retained for a period of six years following the date of the transaction, and shall include:
- (a) A copy of the disclosure document described in section (2) of this rule;
  - (b) A written statement, signed and dated by the purchaser, acknowledging receipt of the written disclosure document and an opportunity to review the supporting documentation;
  - (c) The supporting documentation evidencing the summarized information contained in the disclosure document; and
  - (d) Copies of the documents described in section (6) of this rule.
- (6) The broker-dealer or person described in ORS 59.015(1)(b) must:
- (a) Deliver to the purchaser or licensed escrow agent or title company the written evidence of the obligation properly endorsed, together with the instrument creating the purchaser's lien or assessment of the lien;
  - (b) Record, or cause to have recorded, the instrument creating the purchaser's lien or assignment of the lien in a timely manner in the county or counties where the property is located and retain a copy of the recorded instrument in the purchaser's transaction file; and
  - (c) If a title report prepared by a title insurance company is relied upon for the disclosure required under subsection (3) (b) of this rule, deliver to the purchaser a fully paid title insurance policy running to the benefit of the purchaser.
- (7) If a security transaction is exempt under ORS 59.035(7), the following are also exempt:
- (a) Guarantees or surety agreements created as an integral part of the real estate paper and sold with the real estate paper if the guarantor or surety is not a mortgage banker, mortgage broker, broker-dealer, or person described in ORS 59.015(1)(b); and
  - (b) "With-recourse" agreements or guarantees created by a seller and sold with the real estate paper, if the seller is not a mortgage banker, mortgage broker, broker-dealer, or person described in ORS 59.015(1)(b).

Stats. Implemented: ORS 59.035(7), 59.045 & 59.350(2)

Hist.: FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-37-037; FCS 5-1989, f. & cert. ef. 5-17-89; Renumbered from 441-205-0160; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-035-0030**

### **Manual Exemption**

Fitch Investors Service securities manuals are approved for the purpose of the exemption granted under subsection (10) (c) of ORS 59.035.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(10)

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 22, f. & ef. 11-25-75; Renumbered from 815-030-0035.90; Renumbered from 815-030-0045; FCS 5-1990, f. & cert. ef. 8-21-90

## **441-035-0040**

### **NASDAQ Exemption**

An exemption is granted pursuant to subsection (10)(d) of ORS 59.035 to securities authorized for quotation on the National Association of Securities Dealers Automated Quotations, NASDAQ, except for securities quoted on the OTC Bulletin Board.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(10)

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; Renumbered from 815-030-0035.91; Renumbered from 815-030-0050; FCS 5-1990, f. & cert. ef. 8-21-90

## **441-035-0045**

### **Solicitation of Interest For Offering of Securities Pursuant to SEC Regulation A or OAR 441-065-0225**

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from ORS 59.055 if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blank check company", as such term is defined in OAR 441-045-0010(2);

(b) The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A, as promulgated by the Securities and Exchange Commission, or OAR 441-065-0225;

(c) At least 10 business days prior to the initial solicitation of interest under this rule, the offerer files with the Director:

- (A) A completed solicitation of interest application on a form prescribed by the Director along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published;
- (B) A minimum fee of \$25 prescribed by ORS 59.065(2);
- (C) A completed Form U-4 (salesperson application available from the Securities Section) for at least one, but no more than five, issuer salespersons (each such salesperson must be a bona fide officer, director or employee of the issuer); and
- (D) A salesperson licensing fee of \$15 for each salesperson.
- (d) At least five business days prior to usage, the offerer files with the Director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;
- (e) No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the Director not to distribute is used to solicit indications of interest;
- (f) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication;
- (g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;
- (h) No sale is made until at least seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus;
- (i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:
- (A) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.
- (B) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
- (C) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.
- (D) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.
- (E) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.
- (F) The prohibitions listed in paragraphs (A) through (E) of this subsection shall not apply if the person subject to the

disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed. Any disqualification caused by this action is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption from the requirements of ORS 59.055 for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1). Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under ORS 59.245 and 59.255 and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to ORS 59.045 as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of ORS 59.055, but shall be a violation of the Oregon Securities Law, be actionable by the Director under ORS 59.245 and 59.255, and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to ORS 59.045 as to a specific security or transaction:

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

**(A) THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;**

**(B) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;**

**(C) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and**

**(D) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC, IF APPLICABLE, AND IS REGISTERED IN THIS STATE.**

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

(4) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of ORS 59.055 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on ORS 59.025(7), 59.035(5), 59.035(12) or OAR 441-035-0050 until six months after the last communication with a prospective investor made pursuant to this rule.

Stat. Auth.: ORS 59.025(4) & 59.035(11)

Stats. Implemented: ORS 59.025(4), 59.035(11), 59.035(15) & 59.285

Hist.: FCS 10-1994, f. & cert. ef. 10-3-94

## **441-035-0050**

### **Isolated Issuer Transaction**

(1) An exemption is granted pursuant to ORS 59.035(15) for any isolated issuer transaction not involving a public offering.

(2) For purposes of this rule, an "isolated issuer transaction" shall include sales by or on behalf of an issuer to three or fewer persons during any 24 month period.

Stat. Auth.: ORS 59.035(15)

Stats. Implemented: ORS 59.035(15)

Hist.: FCS 2-1993, f. 4-13-93, cert. ef. 4-15-93

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**Oregon Administrative Rules  
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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 45**

**DENIAL, WITHDRAWAL OR CONDITIONING OF EXEMPTIONS**

**441-045-0010**

**Blank Check Company Securities Denial of Transactional Exemptions**

(1) No issuer, licensed broker-dealer, or affiliate of an issuer or licensed broker-dealer may effect transactions in the securities of a "blank check company", as that term is defined pursuant to section (2) of this rule, in reliance on any exemption pursuant to ORS 59.035.

(2) For purposes of this rule, a "blank check company" shall mean a company that:

(a) Is devoting substantially all of its efforts to establishing a new business in which planned principal operations have not commenced or, that has commenced planned principal operations, but has not derived significant revenue therefrom;

(b) Has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies; and

(c) Is issuing or has issued "penny stock" as that term is defined in section (3) of this rule.

(3) For purposes of this rule, the term "penny stock" shall mean any equity security having a price of less than five dollars, excluding any broker-dealer commission, commission equivalent, mark-up or mark-down in an agency transaction or a contemporaneous offsetting purchase and sale principal transaction, but including any broker-dealer mark-up or mark-down in any other principal transaction; other than a security that is:

(a) Registered or approved for registration and traded on a national securities exchange registered with the Securities and Exchange Commission;

(b) Quoted or approved for quotation on NASDAQ; or

(c) Issued by an investment company registered under the Investment Company Act of 1940.

(4) The provisions of this rule shall not apply to a transaction involving a licensed broker-dealer or affiliate serving as agent in an unsolicited transaction pursuant to ORS 59.035(8).

(5) Written requests for waiver of the prohibitions of this rule pursuant to OAR 441-011-0020 may be made by any person. Waivers may be granted only where it can be shown that such action would not be contrary to the public interest.

Stat. Auth.: ORS 59.045(1)

Stats. Implemented: ORS 59.045(1)

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 49**

**NOTICE FILINGS FOR FEDERAL COVERED SECURITIES**

**441-049-1010**

**Scope and Definitions**

[Hist.: FCS 2-1997(Temp), f. & cert. ef. 10-6-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**441-049-1020**

**General Provisions Applicable to Notice Filing Rules**

[Hist.: FCS 2-1997(Temp), f. & cert. ef. 10-6-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**441-049-1030**

**Investment Company Notice Filing**

[Hist.: FCS 2-1997(Temp), f. & cert. ef. 10-6-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**441-049-1040**

**Offering to Qualified Purchaser; Exempt Securities and Exempt Transactions**

[Hist.: FCS 2-1997(Temp), f. & cert. ef. 10-6-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

## **441-049-1050**

### **Rule 506 Offerings**

[Hist.: FCS 2-1997(Temp), f. & cert. ef. 10-6-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 65**

**REGISTRATION OF SECURITIES**

**441-065-0010**

**Types of Registration**

Types of registration. Securities may be registered under one of the following provisions:

- (1) Registration by qualification (OAR 441-065-0020).
- (2) Registration by filing (OAR 441-065-0030).
- (3) Registration by multijurisdictional coordination (OAR 441-065-0035).
- (4) Registration for resale, trading, or dealing (OAR 441-065-0040).
- (5) Registration for condominium securities (OAR 441-065-0050).
- (6) Registration for limited offerings (OAR 441-065-0060).
- (7) Registration for generic real estate paper offerings (OAR 441-065-0260).
- (8) Registration for certain compensatory benefit plans and contracts (OAR 441-065-0270).

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.1; FCS 3-1991, f. & cert. ef. 8-23-91

**441-065-0020**

## Registration by Qualification

(1) Eligibility. Any issuer, owner, licensed broker-dealer, licensed mortgage broker, or any other person on whose behalf an offering is to be made may apply to register or renew by qualification.

(2) Application. An applicant for registration by qualification must use Form U-1 (developed by the North American Securities Administrators Association, Inc.). The application must be complete and accompanied by the following documents as applicable:

- (a) One copy of the registration statement filed with the Securities and Exchange Commission;
- (b) One copy of the most recent prospectus;
- (c) The underwriting agreement, agreement among underwriters, and selected dealers' agreement;
- (d) Copies, including all amendments, of the issuer's articles of incorporation, certificate of limited partnership, or charter;
- (e) Issuer's bylaws as amended to date;
- (f) Other contracts or documents of a material nature including option or warrant plans, proceeds escrow agreements, stock escrow agreements, key employment contracts, leases, patent opinions, preliminary title reports, and loan commitment letters;
- (g) Counsel's opinion as to the legality of the securities to be issued and counsel's consent to use the opinion;
- (h) Other experts' opinions or reports and consent to use the opinions;
- (i) A specimen of the security including any restrictions on its transfer;
- (j) Proposed advertising material except material described in Rules 134, 134a, 135, or 135a adopted under the Securities Act of 1933, as amended;
- (k) Financial statements; and
- (l) Names and addresses of salespersons if offering will not be made through a broker-dealer.

(3) Post application information. Every applicant or registrant by qualification must:

(a) Advise the Director prior to registration in Oregon of any material change in any information contained in the application or in any documents submitted with or as a part of the application;

(b) File within two business days after filing with the Securities and Exchange Commission:

(A) Any amendments to the federal registration statement designating the changed, revised, or added material or information; and

(B) The final prospectus and any further amendments or supplements thereto.

(c) File within 14 days of the date of registration the final prospectus, if not filed with the Securities and Exchange Commission;

(d) Notify the Director within two business days of receipt of:

(A) Any stop order, order of denial, order to show cause, order of suspension or revocation, injunction, or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court concerning the

securities covered by the application or other securities of the issuer currently being offered to the public; and

(B) Notice of effectiveness of the registration by the Securities and Exchange Commission.

(e) Notify the Director at least two business days prior to the effectiveness of the registration with the Securities and Exchange Commission of:

(A) Any requests by the issuer or applicant to any other state or regulatory authority for permission to withdraw any application to register the securities described in the application; and

(B) All states in which applications have been filed where the issuer or applicant has received notice from the state authority that the application does not comply with state requirements and the applicant or issuer cannot or does not intend to comply with such requirements.

(f) Furnish promptly all additional information and documents with respect to the issuer or the securities covered by the application as the Director requests.

(4) Registration. Registration is effective on the issuance of an order of registration.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.2

## **441-065-0030**

### **Registration by Filing**

(1) Securities for which a registration statement has been filed under the Securities Act of 1933 in connection with the offering of the securities may be registered by filing, whether or not they are also eligible for registration under any other rule if:

(a) The issuer is organized under the laws of the United States or any state, as defined in ORS 174.100, or, if the issuer is not organized under the laws of the United States or any state, it has appointed a duly authorized agent in the United States for service of process;

(b) The issuer has actively engaged in business operations in the United States for a period of at least 36 consecutive calendar months immediately before the filing of the federal registration statement;

(c) The issuer has registered a class of equity securities under Section 12(b) or (g) of the Securities Exchange Act of 1934, which class of securities is held of record by 500 or more persons;

(d) The issuer has:

(A) Either a total net worth of \$4,000,000 or a total net worth of \$2,000,000 and net pretax income from operations before allowances for extraordinary items, for at least two of the three preceding fiscal years;

(B) Not less than 400,000 units of the class of security registered under section 12 of the Securities Exchange Act of 1934 held by the public, excluding securities held by officers and directors of the issuer, underwriters and persons beneficially owning ten percent or more of that class of security; and

(C) No outstanding warrants and options held by the underwriters and executive officers and directors of the issuer in an amount exceeding ten percent of the total number of shares to be outstanding after completion of the offering of the

securities being registered.

(e) The issuer has been subject to the requirements of section 12 of the Securities Exchange Act of 1934 and has filed all the material required to be filed under Sections 13 and 14 of that act for at least 36 consecutive calendar months immediately before the filing of the federal registration statement and the issuer has filed in a timely manner all reports required to be filed during the 12 calendar months next preceding the filing of the federal registration statement;

(f) For at least 30 days during the three months next preceding the offering of the securities registered there have been at least four market makers for the class of equity securities registered under section 12 of the Securities Exchange Act of 1934;

(g) Each of the underwriters participating in the offering of the security and each broker-dealer who will offer the security in this State is a member of or is subject to the rules of fair practice of a national association of securities dealers with respect to the offering and the underwriters have contracted to purchase the securities offered in a principal capacity;

(h) The person(s) on whose behalf the securities are offered must receive proceeds equal to 90 percent or more of the aggregate public offering price;

(i) Neither the issuer nor any of its subsidiaries, since the end of the fiscal year next preceding the filing of the registration statement, have:

(A) Failed to pay a dividend or sinking fund installment on preferred stock;

(B) Defaulted on indebtedness for borrowed money; or

(C) Defaulted on the rental on one or more long-term leases which defaults in the aggregate are material to the financial position of the issuer and its subsidiaries, taken as a whole.

(j) In the case of an equity security, the price at which the security will be offered to the public is not less than five dollars per share.

(2) A filing under this section must contain the following information and be accompanied by the following documents:

(a) A completed Form U-1;

(b) A statement demonstrating eligibility for registration by filing;

(c) The name, address, and form of organization of the issuer;

(d) With respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution: name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

(e) A description of the security being registered; and

(f) A copy of the latest prospectus filed with the registration statement under and satisfying the requirements of Section 10 of the Securities Act of 1933.

(3) If the information and documents required to be filed by section (2) of this rule have been on file with the Director for at least ten business days, or any shorter period which the Director by rule or order allows, and the applicable registration fee has been paid before the effectiveness of the federal registration statement, a registration statement under this section automatically becomes effective concurrently with the effectiveness of the federal registration statement. If the federal registration statement becomes effective before the conditions in this section are satisfied and they are not waived, the registration statement becomes effective when the conditions are satisfied. The registrant shall promptly

notify the Director of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall file promptly a post effective amendment containing the information and documents in the price amendment. The Director shall promptly acknowledge receipt of notification and effectiveness of the registration statement as of the date and time the registration statement became effective with the Securities and Exchange Commission.

(4) Registration pursuant to this rule shall be deemed fair, just, and equitable for purposes of ORS 59.085 and 59.105(1)(a).

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-88; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.3

## **441-065-0035**

### **Registration by Multijurisdictional Coordination**

(1) Securities for which a registration statement has been filed under the Securities Act of 1933 on Securities and Exchange Commission Forms F-7, F-8, F-9 or F-10 in connection with the same offering may be registered by multijurisdictional coordination.

(2) A registration statement filed with the Director under this rule shall contain the following information and be accompanied by the following documents as applicable:

(a) An appropriate registration fee pursuant to ORS 59.065;

(b) An executed registration application on Form U-1;

(c) One copy of the latest form of prospectus filed under the Securities Act of 1933;

(d) If the Director requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(e) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(3) A registration statement under this rule automatically becomes effective at the moment the federal registration becomes effective if all the following conditions are satisfied:

(a) No order is in effect or proceeding is pending pursuant to ORS 59.105;

(b) The application for registration and all required documents have been on file with the Director for seven calendar days or such shorter period as the Director permits by rule or otherwise; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for two full business days or such shorter period as the Director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Director by telephone or otherwise of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call

prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Director may institute proceedings to suspend or revoke the registration pursuant to ORS 59.105.

(4) If the federal registration statement becomes effective before all the conditions specified in section (3) of this rule are satisfied, and those pending conditions are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Director of the date when the federal registration statement is expected to become effective, the Director shall promptly advise the registrant by telephone or otherwise, at the registrant's expense, whether all the conditions are satisfied and whether the Director then contemplates the institution of a proceeding pursuant to ORS 59.105. This advice by the Director does not preclude the institution of such a proceeding at any time.

(5) A registration under this rule remains effective for a period of 12 months from the initial date of effectiveness unless earlier terminated by the registrant or the Director. A registrant may renew a registration under this rule by meeting the requirements of this rule.

(6) For purposes of this rule, financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, and which have been accepted by the Securities and Exchange Commission for inclusion in Form F-7, F-8, F-9 or F-10, with or without reconciliation to United States generally accepted accounting principles, consistently applied, will be accepted.

(7) Any person, not otherwise licensed in Oregon, who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to this rule and who is not otherwise compensated in connection with the sale of the registered securities, is exempt from the licensing requirements of OAR Chapter 441, Division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

(8) Any person, not otherwise licensed in Oregon, who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to this rule and who does not perform any active solicitation in this state, is exempt from the licensing requirements of OAR Chapter 441, Division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

Stat. Auth.: ORS 59.015, 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 4-1991, f. & cert. ef. 8-23-91

## **441-065-0040**

### **Registration for Resale, or Dealing and Trading**

(1) Eligibility. A licensed broker-dealer may register securities for resale, or dealing and trading purposes if:

(a) The securities are outstanding in the hands of the public; and either:

(A) The issuer is organized under the laws of the United States or any state, as defined in ORS 174.100; or

(B) There are at least 300 beneficial owners of the security domiciled in the United States.

(b) The issuer has not made an offer of the same class of securities for six months except to employees;

(c) The securities were acquired in the ordinary and usual course of business by the seller and are not part of an unsold allotment or an attempt to evade the Oregon Securities Law;

- (d) The securities are sold at prices reasonably related to the current market price at the time of sale if a market exists;
- (e) Any commissions collected by the broker-dealer on account of the sale are not in excess of the usual and customary commissions collected with respect to securities and transactions having comparable characteristics; and
- (f) The issuer agrees or is required to provide an audited balance sheet, statement of income or operations, and statement of cash flows annually to the holders of the class of security to be registered.

(2) Disqualification. Registration for resale, or dealing and trading may be denied if at the time of application the issuer is insolvent or if, within the five years preceding the filing of the application, the issuer or any executive officer, director, or general partner of the issuer:

- (a) Has been subject to an administrative order issued by the Director for violation of any provision of the Oregon Securities Law or any rule or order of the Director;
- (b) Has been or is engaged in dishonest or fraudulent conduct with regard to the securities;
- (c) Has been convicted of a misdemeanor, an essential element of which is fraud, or a felony;
- (d) Has made or caused to be made to the Director any false representation of a material fact or has suppressed or withheld from the Director any material information;
- (e) Has refused to permit an examination to be made by the Director or failed to file any report including any financial report or furnish any information required by the Director in connection with the Oregon Securities Law;
- (f) Has been subject to any order entered by a governmental agency or self-regulatory organization prohibiting or suspending the person from engaging in or continuing any conduct or practice involving any aspect of the securities business; or
- (g) Has been subject to any judgment or decree of any court of competent jurisdiction which is based on either securities violations or fraud.

(3) Conditions of registration:

- (a) The registration shall not be effective for sales which occur within 90 days after any public offering of the same class of securities which is not registered with the Securities and Exchange Commission under the Securities Act of 1933;
- (b) The security shall not be sold pursuant to exemption under ORS 59.035(8), (9), or (10) when the registration is ineffective under subsection (3)(a) of this rule. This condition shall not apply to sales for which the broker-dealer places in its records reasonably sufficient evidence to document that the securities sold were issued and outstanding prior to the public offer, or are not part of the new issue.

(4) Application. An applicant for registration for resale, or dealing and trading shall apply on a form approved by the Director. The application must be accompanied by the following information:

- (a) The information required under subsection (5)(b) of this rule;
- (b) Appropriate fees;
- (c) The annual report of the issuer for the most recent fiscal year including audited financial statements;
- (d) Interim financial statements of the issuer not over 135 days old (unless annual statements are current); and
- (e) If the issuer is not a United States organization, a signed opinion of counsel duly licensed in any of the United States that the securities are qualified for sale in the United States or evidence that the securities are registered with the Securities and Exchange Commission.

(5) Recordkeeping and notice to purchasers:

(a) The applicant and any other broker-dealer relying upon the registration must:

(A) Maintain the information required in subsection (5)(b) of this rule in its records and keep the information reasonably current for each sale;

(B) Notify any proposed purchaser prior to the time of sale that the information is in its records; and

(C) Make the information reasonably available upon request to any person expressing an interest in a proposed transaction in the security with the broker-dealer.

(b) The applicant must maintain in its records at the time of sale and for two years after any sale the information listed in this section. The broker-dealer must have obtained the information from sources which it has a reasonable basis for believing are reliable. Forms filed by the issuer with the Securities and Exchange Commission are deemed a reliable source:

(A) The exact name of the issuer and its predecessor (if any);

(B) The address of its principal executive offices;

(C) The date and state, province, or nation of organization and type of organization;

(D) The exact title and class of the security;

(E) The par or stated value of the security;

(F) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;

(G) The name and address of the transfer agent;

(H) The nature of the issuer's business;

(I) The nature of products or services offered;

(J) The nature and extent of the issuer's facilities;

(K) The name of the chief executive officer and members of the board of directors;

(L) The issuer's most recent balance sheet and statement of income or operations and cash flows, which must be audited;

(M) Similar financial information, which may be unaudited, for such part of the two fiscal years preceding the audited balance sheet and statements as the issuer or its predecessor has been in existence;

(N) Whether the broker-dealer or any associated person is affiliated directly or indirectly with the issuer;

(O) Whether the registration is submitted directly or indirectly for the benefit of any other broker-dealer, and, if so, the name of such broker-dealer; and

(P) Whether the registration is being submitted directly or indirectly on behalf of the issuer, or any director, controlling person, officer, or any person, directly or indirectly the beneficial owner of more than ten percent of the outstanding units or shares of any equity security of the issuer and, if so, the name of such person and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(c) When the information described in subsection (5)(b) of this rule is made available to others upon request pursuant to this rule, such delivery, unless otherwise represented, shall not constitute a representation by such broker-dealer that such information is true and correct, but shall constitute a representation by such broker-dealer that the information is reasonably current in relation to the day the information is submitted, that the broker-dealer has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which the broker-dealer has a reasonable basis for believing are reliable.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.035(9) & 59.065

Hist.: FCS 6-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.4

## **441-065-0050**

### **Condominium Securities**

#### (1) Definitions:

(a) "Condominium Security" shall be defined to include the sale of a condominium in fee, leasehold, undivided interest or a license or right to use a facility with any of the following arrangements: Units offered in conjunction with:

(A) The offer of a rental arrangement or similar service with emphasis on the economic benefits derived by the purchaser from the managerial efforts of the promoter in connection with the rental of the units;

(B) The offering of participation in a rental pool arrangement;

(C) The offering of a rental or similar arrangement which requires the purchaser to hold a unit available for rental or to use an exclusive rental agent or otherwise materially restricts the purchaser's occupancy of his units.

(b) "Net Fee Contract" means a contract under which a management company, for a percentage of the gross rental income, provides overall management of the rental operation of the condominium project but the operating costs are borne by unit owners;

(c) "Gross Fee Contract" means a contract under which a management company, for a percentage of the gross rental income, provides management services. The cost of operation of the rental aspects of the project are borne by the management company but the cost of maintenance of the project is borne by the unit owners;

(d) "Unit" shall mean either a condominium unit, a leasehold interest in a condominium unit, or condominium project, a partial or limited partnership interest, or undivided interest in a condominium unit;

(e) "Operator" means the individual or company which does or will operate the project for the condominium unit owners;

(f) "Developer" means the individual or company which constructs, acquires or converts a property in which condominium unit securities, as herein defined, are to be sold.

#### (2) Project Financing:

(a) The financing arrangements for completion of the project shall be fully disclosed in the prospectus;

(b) If the project is to be phased or staged, the prospectus should clearly disclose what the effect of failure to complete the phases would be on the recreational amenities, public facilities and future use of the units;

(c) No encumbrances or liens of any kind shall be permitted on any portion of the project, except an individual investor-purchaser may arrange for financing the purchase of his unit and encumber the unit for the purchase price, including a mortgage or other arrangement to purchase the furniture package;

(d)(A) The developer or operator shall undertake to commit the restaurant, bar, hotel, and convention facilities to their specific uses through dedication in the Declaration of Unit Ownership; and any other use of those facilities shall only be permitted by a majority of unit owners;

(B) If, for any reason, the developer or operator shall be unable or unwilling to continue the operation of those facilities, the unit owners shall have the right to acquire title to the facilities, with the purchase price to be determined by arbitration;

(C) There shall be no separate ownership of service areas and other maintenance facilities necessary for the operation of the restaurant, bar, hotel, and convention facilities, and the unit owners shall own pro rata shares in all such service areas and maintenance facilities.

(e) The amount of any profits to the developer, whether by way of construction fee, finder's fee, acquisition fee, conversion costs, developer's fee, or otherwise should be disclosed in the prospectus;

(f) The proceeds of the offering shall be escrowed until the following conditions have been met:

(A) That the other condominium units can be delivered free and clear of any encumbrance (other than the major lease or long-term ownership, if such is the case). This shall not prevent a unit purchaser from encumbering a unit by purchase money lien or mortgage. In lieu of the escrow requirement, a satisfactory completion bond or guaranty by a financial institution may be substituted;

(B) A number of units have been sold which, in the opinion of the Director and as represented in the prospectus, will make the project feasible in light of the objectives promised to the investor-purchaser;

(C) The submission to the Director of an architect's certification that the units have been constructed according to specifications and in accordance with industry standards. In the case of a conversion of an existing structure into units, the architect's certificate should include a statement that the conversion has taken place according to specifications and in accordance with industry standards. As an alternative to the architect's certificate, an Engineer's Certification may be submitted which includes a structural or condition report on the units.

### (3) Management Contracts:

(a) The management fee shall be reasonable in light of the number of units proposed to be managed and the duties imposed thereby and shall be disclosed in the prospectus. The fees, rights, and duties of the operator and unit owners may be negotiated at the end of not more than the three-year period from the date of the first notice and at any time after the first three years, and may be canceled upon a majority vote of the unit owners. The operator shall provide for full-time management of the units and hotel facilities. In lieu of the above, a management contract with a major hotel operator with demonstrated management capabilities and expertise will be permitted for a term of up to ten years. Any such contract can be terminated by a vote of the holders of at least two-thirds (2/3) of the units;

(b) A minimum number of rooms committed to a rental program shall be required and withdrawal from such a rental program shall not be permitted except upon approval of the manager and all other unit owners participating in the rental program;

(c) The management contract shall provide that the operator shall submit to the unit owners, at least once annually, a written report summarizing the receipts and disbursements affecting the operation of the hotel facilities;

(d) In addition, the management contract shall provide for the disbursement to the unit owners, at least quarterly, their pro rata share of receipts from the operations of the hotel facilities.

**(4) Financial Statements:**

(a) If the operator is a subsidiary of another company, the financial statements of both the parent and subsidiary will be required to be furnished in the prospectus. Such statements shall be audited in accordance with the standards prescribed by Securities and Exchange Commission Release S-X;

(b) In an interstate offering of units, the use of projections will be encouraged unless prohibited by the Securities and Exchange Commission. In all intrastate offerings of units, the operator/developer shall provide the Director with a projected cash flow for the first three years of operation, the projection shall be realistic in its predictions and shall clearly identify the assumptions made with respect to all material features of the presentation.

(5) **Commissions and Fees:** The combined real estate brokerage selling commission and securities underwriting commissions and fees in total shall not exceed 15 percent of the aggregate purchase price of the units being offered. All such commissions and fees shall be disclosed in the prospectus. Additional costs for accountants' fees, attorneys' fees, printing costs, and any additional costs required by any state or federal regulatory agency may be allowed in addition to the 15 percent limitation.

**(6) Prospectus:**

(a) The prospectus or other document used in connection with the solicitation or sale must be filed with the Director;

(b) The prospectus shall be in a form required by the Director and may also include such information as would make it acceptable under the real estate laws or regulations of any state in which the offering is to be made;

(c) The prospectus shall contain a facsimile of an engineer's survey and report of architect's certificate concerning the condition of the project in a form prescribed by the Director.

(7) **Authority of Director:** The Director may amend these rules if, in his discretion, it is determined to be in the public interest and appropriate for protection of investors.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.065

Hist.: CC 27, f. 4-9-76, ef. 4-16-76; Renumbered from 815-030-0056

## **Registration of Securities Offered in Connection with Or Structured as a Regulation "D" or Similar Non-Public Offering**

### **441-065-0060**

#### **Creation of Classifications**

There are created the following classifications of transactions in securities:

(1) An offering relying on "Regulation D" adopted by the Securities and Exchange Commission in **17 CFR Parts 230 and 239**, as amended August 13, 1992.

(2) An offering relying on a federal statute or rule other than "Regulation D" but designed to meet the applicable requirements of OAR 441-065-0070 through 441-065-0240 as a non-public or limited offering.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0000; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0070**

### **Definitions**

The following definitions are adopted for the purposes of OAR 441-065-0060 through 441-065-0240:

(1) "Accredited Investor". Accredited investor as defined in OAR 441-035-0010.

(2) "Affiliate". An "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(3) "Aggregate Offering Price". "Aggregate Offering Price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of non-cash consideration must be reasonable at the time made.

(4) "Business Combination". "Business Combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 (**17 CFR 230.145**) and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition).

(5) "Calculation of Number of Purchasers". For purposes of calculating the number of purchasers under OAR 441-065-0230(2)(b) and 441-065-0240(2)(b) only, the following shall apply:

(a) The following purchasers shall be excluded:

(A) Any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(B) Any trust or estate in which a purchaser and any of the persons related to the purchaser, as specified in paragraph (5)(a)(A) or (C) of this rule, collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(C) Any corporation or other organization of which a purchaser and any of the persons related to him or her, as specified in paragraph (5)(a)(A) or (B) of this rule, collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(D) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under OAR 441-035-0010(8),

then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of OAR 441-065-0060 through 441-065-0240, except to the extent provided in subsection (5)(a) of this rule;

(c) A non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan;

(d) Clients of an investment adviser or customers of a broker-dealer shall be considered "purchasers" under OAR 441-065-0060 through 441-065-0240 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer;

(e) The issuer must satisfy all the other provisions of OAR 441-065-0060 through 441-065-0240 for all purchasers whether or not they are included in calculating the number of purchasers.

(6) "Effective Date of Registration". The "Effective Date of Registration" means the date an issuer is authorized to sell securities under an order of registration issued by the Director.

(7) "Executive Officer". "Executive Officer" shall mean the president, any vice president in charge of a principal business unit, division or function (such as administration, sales or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(8) "Issuer". The definition of the term "issuer" in section (7) of ORS 59.015 shall apply, except that in the case of a proceeding under the **Federal Bankruptcy Code (11 U.S.C. 101 et seq.)**, the trustee or debtor in possession shall be considered the issuer in an offering under a plan of reorganization, if the securities are to be issued under the plan.

(9) "Permitted Oregon Purchaser". A "Permitted Oregon Purchaser" means 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 the person becomes a purchaser of the securities:

(a) Any natural person who purchases at least \$10,000 of the securities being offered, where the purchaser's total purchase does not exceed ten percent of the purchaser's net worth at the time of purchase. The purchase must be only for cash or marketable securities or both. The net worth of the purchaser's spouse may be included for the purpose of this subsection;

(b) Any natural person who had an individual income in excess of \$70,000 in each of the two most recent years and who reasonably expects an income in excess of \$70,000 in the current year, provided the amount purchased does not exceed ten percent of the person's individual income for the most recent year. The purchase must be only for cash or marketable securities or both. The income of a spouse may be included for the purpose of this subsection;

(c) Any partnership, corporation, trust or other entity in which all of the equity owners, or holders of beneficial interests in the case of a trust, satisfy the requirements of subsection (a) or (b) of this section and the amount invested by the entity would be allowable as an individual purchase by each person under the same subsections.

(10) "Purchaser Representative". "Purchaser Representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(A) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(B) A trust or estate in which the purchaser representative and any persons related to the purchaser representative, as specified in paragraph (a)(A) or (C) of this section, collectively have more than 50 percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(C) A corporation or other organization of which the purchaser representative and any persons related to the purchaser representative, as specified in paragraph (a)(A) or (B) of this section, collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interest.

(b) Has such knowledge and experience in financial and business matters that he or she is capable of evaluating alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be the purchaser's purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the sale of the securities to that purchaser any material relationship between the purchaser representative or his or her affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and the compensation received or to be received as a result of such relationship.

(11) "Sophisticated Purchaser". A "Sophisticated Purchaser" means any person, acting alone or with a Purchaser Representative, that has, or that the issuer reasonably believes has, such knowledge and experience in financial and business matters that the person is capable of evaluating the merits and risks of the proposed investment.

(12) "Suitable Purchaser". A "Suitable Purchaser" means any person who purchases the securities of the issuer through a broker-dealer, provided that each of the following requirements are met:

(a) The broker-dealer is both licensed under the Oregon Securities Law and registered under section 15(b) of the Securities Exchange Act of 1934;

(b) The broker-dealer reasonably believes that adequate diligence and review have been applied in connection with the offering being registered in order for the broker-dealer to adequately determine the suitability of the offering for each purchaser; and

(c) The broker-dealer reasonably believes that the security is suitable for the purchaser after reasonable inquiry concerning the purchaser's investment objectives, financial situation and needs, and after considering any other information known by the broker-dealer.

(13) "Termination of the Offering". The "Termination of the Offering" means the earlier of:

(a) The expiration of an order of registration; or

(b) A written notice of termination filed with the Director.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0005; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

**441-065-0080**

## **General Requirements and Limitations**

(1) OAR 441-065-0060 through 441-065-0210 are applicable to offerings registered pursuant to OAR 441-065-0220, 441-065-0225, 441-065-0230 or 441-065-0240.

(2) Registration of offerings pursuant to OAR 441-065-0220, 441-065-0225, 441-065-0230 or 441-065-0240 is only available to the issuer of the securities for purposes of the issuance of its securities.

(3) No offering of the securities of a "blank check company" may be registered pursuant to OAR 441-065-0220, 441-065-0225, 441-065-0230, or 441-065-0240. For purposes of this rule, a "blank check company" shall be as defined in OAR 441-045-0010(2).

(4) Options, warrants and similar rights to purchase securities which are part of an offering registered pursuant to OAR 441-065-0220, 441-065-0225, 441-065-0230 or 441-065-0240 constitute a continuous offering of the underlying securities during the exercise period and require the securities to be registered and renewed on an annual basis and any disclosure materials to be kept continuously current throughout the exercise period.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0010; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0090**

### **Integration**

All separate sales of securities by the issuer that are a part of the same offering that is registered pursuant to OAR 441-065-0220, 441-065-0225, 441-065-0230 or 441-065-0240 will be counted and included as securities sold under the same offering except as provided in this rule:

(1) A separate sale of securities within or without this state will be included as part of the same offering if, after considering the following elements, there are compelling reasons to treat the sale as part of the same offering. The elements to be considered are:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involved issuance of the same class of security;
- (c) Whether the sales are made at or about the same time;
- (d) Whether the same type of consideration is received; and
- (e) Whether the sales are made for the same general purpose.

(2) Employee benefit plans. Offers and sales of any securities under an employee benefit plan as defined by **17 CFR 230.405** or **230.701** are not included for purposes of this rule.

(3) Safe harbor by absence of sales. Sales of securities made more than six months prior to the effective date of registration under OAR 441-065-0220, 441-065-0225, 441-065-0230 or 441-065-0240 or more than six months after the termination of the offering will not be counted or included as sales made as part of the same offering under this rule if there are no sales of securities of the same or similar class by the issuer during either six month period other than sales of securities under an employee benefit plan as defined by **17 CFR 230.405** or **230.701**.

(4) Safe harbor for "discrete offerings" of partnership interests. Offerings of interests in a partnership shall not be

included as securities sold under the same offering, even where there is a common sponsor or affiliate involved in offerings of interests in another entity, if all of the conditions of subsections (4)(b) through (f) of this rule are satisfied:

(a) As used in this subsection only, the following definitions are applicable:

(A) A "partnership" includes a general partnership, limited partnership, joint venture or other similar entity. A "partnership" includes existing entities as well as those that are to be formed in the future;

(B) A "sponsor" is a promoter or any person directly or indirectly instrumental in organizing the entity wholly or in part, or any person who will manage or participate in the management of the partnership. A "sponsor" includes a general partner and affiliate of the sponsor. A "sponsor" does not include independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with offering of interests in the partnership.

(b) Separate entity. The partnership must:

(A) Be a separate legal entity;

(B) Have separate books and records;

(C) Not commingle funds of the partnership with that of the sponsor or any other entity having the same sponsor.

(c) Economic independence. The partnership at the time the interests are sold must have an independent opportunity to meet its primary investment objective. If the partnership is substantially dependent on the creation, continued existence or economic results of investments of another entity having a common sponsor, then the partnership does not have an independent opportunity to meet its primary investment objective;

(d) Application of proceeds. No material portion of the gross offering proceeds of the partnership shall be invested in properties where another entity having a common sponsor has also invested and continues to hold invested, a material portion of its gross offering proceeds;

(e) Unspecified programs. An offering that does not identify at least 50 percent of the assets in which the partnership intends to invest does not qualify under this safe harbor if:

(A) Another entity with a common sponsor was formed to conduct the same general type of activity and that entity has not invested or committed the major portion of its gross offering proceeds prior to commencement of this offering by the registering partnership; or

(B) The sponsor creates a simultaneous or subsequent offering through another entity to conduct the same general type of activity before the registering partnership has invested or committed for investment the major portion of its gross offering proceeds. This paragraph does not apply if the investment to be made by the other entity is fully identified.

(f) An offering of interests in a partnership which is formed to engage in sale and leaseback transactions does not qualify under this safe harbor if the ultimate intended lessee of the assets in which the partnership invests is a sponsor of the partnership.

(5) Safe harbor by order of registration:

(a) Applicants desiring the Director's concurrence of non-integration under section (1) of this rule or applicability of the safe harbors in section (3) or (4) of this rule shall file a written request with their application for registration. Applicants shall attach arguments and citations in support of their position;

(b) By order of registration, the Director may determine whether separate sales will be integrated under this rule;

(c) No presumptions are created by the non-availability of safe harbors under section (3) or (4) of this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0015; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0100**

### **Information Requirements**

- (1) In general. Nothing in these rules should be construed as waiving or modifying the statutory requirements of the Oregon Securities Law for full and adequate disclosures of material items.
- (2) Sales that are restricted to accredited investors. When sales are restricted only to accredited investors, other than in section (4) of this rule, no specific information or method of providing disclosure is required.
- (3) Registered offerings under OAR 441-065-0220. When an offering is registered under OAR 441-065-0220, each prospective purchaser of the securities shall be given written disclosure materials to the extent material to an understanding of the issuer, its business and the securities being offered.
- (4) Registered offerings under OAR 441-065-0225. When an offering is registered under OAR 441-065-0225, each prospective purchaser of the securities shall be given a copy of the Form U-7 Disclosure Document (including all amendments) filed with the Director pursuant to OAR 441-065-0170.
- (5) Registered offerings under OAR 441-065-0230 or 441-065-0240. When an offering is registered under OAR 441-065-0230 or 441-065-0240, each prospective purchaser of the securities shall be given disclosures to the extent material to an understanding of the issuer, its business, and the securities being offered. The disclosures must comply with subsections (5)(a), (b), and (c) or (b), (c), and (d) of this rule:
  - (a) Providing at least the type of information and documentation to all investors as provided in **Securities and Exchange Commission Rule 502(b)(2) (17 CFR 230.502(b)(2))** as of April 15, 1982, as amended August 13, 1992, which rule is adopted by reference;
  - (b) Providing an opportunity to a prospective purchaser 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 provided under subsection (5)(a) of this rule;
  - (c) Providing to persons who do not fit the category of "accredited investor" as defined in OAR 441-035-0010 a brief description in writing of any written information concerning the offering that is provided by the issuer to any accredited investor provided that the purchaser makes a written request for the information;
  - (d) Providing written disclosure materials which provide full and adequate disclosure of all material matters.
- (6) Time for disclosures. All disclosures must be provided prior to the time a person becomes a purchaser of the securities.
- (7) Written legend. Except for offers and sales of securities registered under OAR 441-065-0225, for which the provisions of this section shall not apply, when written information is provided to a prospective Oregon purchaser, the written information shall contain one of the following legends which shall be set out in a prominent place:

(a) **"The securities offered have been registered with the Director of the Department of Insurance and Finance for the State of Oregon under provisions of OAR 441-065-0060 through 441-065-0240. The investor is advised that the Director has made only a cursory review of the registration statement and has not reviewed this document. The investor must rely on the investor's own examination of the company creating the securities, and the terms of the offering including the merits and risks involved in making an investment decision on these securities";** or

(b) **"In making an investment decision investors must rely on their own examination of the person or entity creating the securities and the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933 as amended, pursuant to registration or exemption therefrom. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time".**

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.065 & 59.085

Stats. Implemented: ORS 59.065, 59.085 & 59.135

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0020; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0110**

### **Public Advertising and General Solicitation**

(1) Offerings conducted pursuant to OAR 441-065-0225 may be offered and sold using public advertising or general solicitation provided the sales materials to be used are reviewed and cleared by the Securities Section prior to use. Any sales materials proposed to be used shall contain no more than the following:

- (a) The name of the issuer;
- (b) Characterization of the issuer as indicated on the cover page of the Form U-7 Disclosure Document to be delivered to prospective investors;
- (c) Address and telephone number of the issuer;
- (d) A brief description of the issuer's business or proposed business;
- (e) The number and type of securities offered and the offering price per security;
- (f) The name, address and telephone number of any selling agent authorized to sell the securities;
- (g) A statement that the offering does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by the Disclosure Document;
- (h) The procedure for obtaining the Disclosure Document; and
- (i) The issuer's corporate logo.

(2) Offerings conducted pursuant to OAR 441-065-0220, 441-065-0230 or 441-065-0240 may not be offered or sold

using any form of public advertising or general solicitation without the prior authorization of the Director.

Stat. Auth.: ORS 59.065 & 59.085

Stats. Implemented: ORS 59.065, 59.085 & 59.135

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0025; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## 441-065-0130

### Disqualification

(1) Federal Disqualification. The Director may deny the use of any of the optional registration of OAR 441-065-0220 through 441-065-0240 if the applicant is disqualified from using any pro-provisions of **SEC Regulations A or D**.

(2) Oregon Disqualification. The Director may deny the use of any of the optional registration provisions of OAR 441-065-0220 through 441-065-0240 if any of the parties of interest described in the Securities Act of 1933, Regulation A, **SEC Rule 230.252 Sections (c), (d), (e), or (f)**:

(a) Has filed a registration statement which is the subject of a currently effective stop order entered by any state within five years prior to the registration of the offering;

(b) Has been convicted within five years prior to the registration of:

(A) Any felony or misdemeanor in connection with the offer, purchase or sale of any security or involving the making of a false filing with a state; or

(B) Any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud; or

(c) Is currently subject to any state administrative order or judgment, including an injunction entered within five years prior to the filing of the application of registration:

(A) By the state's securities administrator; or

(B) In which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found.

(d) Is currently subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the filing of the application of registration, permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with a state.

(3)(a) The disqualifications of section (2) of this rule shall not apply if the party of interest subject to the disqualifying action is duly licensed to conduct securities related business in the state in which the the disqualifying action was entered against the party of interest or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person exempt from the disqualification provisions of this rule by virtue of the provisions of this subsection may act in a capacity other than that for which the person is licensed in this state.

(b) Any disqualification caused by section (2) of this rule is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that

registration be denied.

(4) The Director will review the representations in each application to register to determine whether registration will be denied for any of the reasons shown in section (2) of this rule. Registration may be allowed upon showing that it is in the public interest to allow the registration and that safeguards have been provided for that offering.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.065, 59.085 & 59.105

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0035; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0140**

### **Limitation on Sales Expenses**

(1) All expenses of an offering registered pursuant to OAR 441-065-0220, 441-065-0230 or 441-065-0240, including sales expenses, acquisition expenses, expenses for preparing the offering and the like shall be reasonable after taking into account the nature of the offering, amount to be raised and proposed use of funds.

(2) The provisions of OAR 441-085-0010 shall apply to offerings registered pursuant to OAR 441-065-0225, except that "20%" shall be substituted for "15%" in OAR 441-085-0020(2) relating to selling expenses.

Stat. Auth.: ORS 59.085

Stats. Implemented: ORS 59.065, 59.085 & 59.105

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0040; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0150**

### **Escrow of Proceeds**

(1) The applicant for registration pursuant to OAR 441-065-0220 through 441-065-0240 must establish an escrow or similar arrangement for funds raised in an offering if the conditions set forth in section (2) of this rule exist, unless the requirement is waived under section (4) of this rule.

(2) An escrow must be established where, because of the nature of the intended use of the funds or the nature of the project or business plan, a minimum amount of funds must be raised within or outside this state in order that the project can get underway with a reasonable chance of success even if no further sales are made.

(3) Where an escrow is required:

(a) The escrow agent must be an institution licensed to conduct banking, savings and loan, trust or other escrow activities or a licensed professional whose requirements of licensure requires the segregation of funds of others into fiduciary trust accounts; but it cannot be the issuer, a promoter of an issuer to be formed, or an affiliate of such issuer or promoter;

(b) The escrow terms must include instructions that the funds placed into escrow shall be held in trust for the benefit of

the investors and shall not be released to the issuer until the minimum amount of funds set forth in the application for registration has been raised; and

(c) The provisions of this section may be satisfied by the holding of the funds without formal escrow arrangement by a person described in subsection (3)(a) of this rule, until the minimum amount of funds has been received for the account of the purchasers.

(4) The requirements of this rule may be waived by the Director upon a showing that an escrow is not necessary and that investor rights are adequately protected.

Stat. Auth.: ORS 59.085 & 59.285

Stats. Implemented: ORS 59.065 & 59.085

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0045; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## **441-065-0160**

### **Rescission of Improvident Sales Including Oversales**

(1) The improvident closing of a sale of securities in violation of any of the provisions of OAR 441-065-0060 through 441-065-0240 will not by itself invalidate the registration of securities if the conditions of subsections (a), (b), (c), and either (d) or (e) of this section are satisfied:

(a) The registrant seeks an appropriate amendment to the registration with the Director, provides full details of the transaction, and receives an amended order authorizing the proposed transaction;

(b) The registrant and the person acting on behalf of the registrant who sold the security demonstrate to the Director that they had acted in good faith and sustain the burden of proof that they acted without intent to violate the provisions of this rule;

(c) The registrant cancels the sale or provides rescission to the purchaser involved within a reasonable time after discovery;

(d) The rescission or cancellation is made prior to release of proceeds from escrow;

(e) The registrant has the financial capacity to pay and offers to or does provide the rescission payment out of separate funds, which payment does not create additional risks or obligations to the remaining purchasers or the project for which the funds were raised.

(2) Nothing in this rule shall allow a rescission payment or payment date to be made subject to resale of the interest to be cancelled.

(3) This rule may be used by the registrant as well as all persons liable as a result of the sale of securities.

Stat. Auth.: ORS 59.065 & 59.125

Stats. Implemented: ORS 59.065 & 59.125

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0050; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

**441-065-0170**

**Filing Requirements for Applications to Register Securities**

(1) An application to register securities filed pursuant to OAR 441-065-0220 must include the following:

(a) A completed Form 440-2013 (a form for the registration of limited or non-public offerings available from the Securities Section);

(b) A copy of the written disclosures required to be delivered to prospective investors pursuant to OAR 441-065-0100(3);

(c) A registration fee in an amount calculated in accordance with ORS 59.065;

(d) Unless the offering is being sold through a licensed broker-dealer or by a person otherwise exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 (available from the Securities Section) and a \$15 license fee in accordance with ORS 59.175 and OAR 441-065-0180; and

(e) Any additional or supplementary materials requested by the Director.

(2) An application to register securities filed pursuant to OAR 441-065-0225 must include the following:

(a) A completed Form U-7 (a uniform disclosure document for small corporate offerings available from the Securities Section) including the following exhibits, to the extent applicable:

(A) Form of underwriting or selling agency agreement;

(B) Issuer's articles of incorporation or other charter documents and all amendments thereto;

(C) Issuer's bylaws, as amended to date;

(D) Copy of any resolutions by the issuer's board of directors setting forth terms and provisions of capital stock to be issued;

(E) Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants or rights to be offered;

(F) Specimen of security to be offered (including any legend restricting resale);

(G) Copy of all advertising or other materials directed to or to be furnished investors in the offering;

(H) Form of escrow agreement for escrow of proceeds;

(I) Consent to inclusion in Form U-7 Disclosure Document of accountant's report;

(J) Consent to inclusion in Form U-7 Disclosure Document of tax advisor's opinion or description of tax consequences;

(K) Consent to inclusion in Form U-7 Disclosure Document of any evaluation of litigation or administrative action by counsel;

(L) Form of any Subscription Agreement for the purchase of the securities;

(M) Opinion of counsel that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the issuer in accordance with their terms;

(N) Schedule of residence street addresses of the issuer's officers, directors and principal stockholders;

(O) Work sheets showing computations of responses to Questions 6, 7(a), 8(a), 8(b) and 17(b) of Form U-7 Disclosure Document; and

(P) Any additional or supplementary materials requested by the Director;

(b) A registration fee in an amount calculated in accordance with ORS 59.065;

(c) Unless the offering is being sold through a licensed broker-dealer or by a person otherwise exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 (available from the Securities Section) and a \$15 license fee in accordance with ORS 59.175 and OAR 441-065-0180.

(d) After an order of registration has been issued by the Director, and while the offering is still in progress, if any portion of the Form U-7 Disclosure Document should need to be changed, revised or supplemented because of a material event concerning the issuer or the offering to make it accurate and complete, it shall be so changed, revised or supplemented. If changed, revised or supplemented (including the addition on the cover page of another state in which the offering has been registered), the Form U-7 Disclosure Document as so changed, revised or supplemented, clearly marked to show changes from the previously filed version, shall be filed and cleared by the Director before use. If any of the changes, revisions or supplements are of such significance that they are material to the making of an investment decision by an investor, and if the minimum proceeds have not been raised, the Form U-7 Disclosure Document as so changed, revised or supplemented shall, after filing with and clearance by the Director, be recirculated to each Oregon investor that had previously subscribed and each such investor must be given the opportunity to rescind or reconfirm his or her investment.

(3) An application to register securities filed pursuant to OAR 441-065-0230 or 441-065-0240 must include the following:

(a) A completed Form 440-2013 (a form for the registration of limited or non-public offerings available from the Securities Section);

(b) A registration fee in an amount calculated in accordance with ORS 59.065;

(c) Unless the offering is being sold through a licensed broker-dealer or by a person otherwise exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 (available from the Securities Section) and a \$15 license fee in accordance with ORS 59.175 and OAR 441-065-0180; and

(d) Any additional or supplementary materials requested by the Director.

Stat. Auth.: ORS 59.065 & 59.235

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0055; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 7-1994, f. & cert. ef. 5-13-94

## **441-065-0180**

### **Licensing of Salespersons**

(1) General License Requirements. No special exemptions from the licensing requirements of ORS 59.175 and OAR Chapter 441 Division 175 are available for persons offering or selling securities registered pursuant to OAR 441-065-0220, 441-065-0225, 441-065-0230 or 441-065-0240. Offers and sales may only be made by licensed broker-dealers, licensed salespersons or persons otherwise excluded by rule pursuant to OAR 441-175-0020 through 441-175-0040.

(2) Issuer Salespersons; Licensing Conditions. The following special licensing conditions are applicable to salespersons licensed to an issuer:

- (a) An issuer may license up to five persons as issuer salespersons;
- (b) Issuer salespersons must be bona fide officers, directors or employees of the issuer;
- (c) Issuer salespersons are exempt from examination requirements and are not required to file a surety bond or an irrevocable letter of credit;
- (d) An issuer salesperson may not be simultaneously licensed to two or more employers; and
- (e) The issuer and salespersons must otherwise comply with the provisions of OAR 441-175-0120.

(3) Issuer Salespersons; Licensing Procedures. An issuer must submit to the Director a complete application to license each salesperson, including:

- (a) A completed Form U-4 (salesperson application available from the Securities Section); and
- (b) A salesperson licensing fee of \$15 for each salesperson.

Stat. Auth.: ORS 59.165 & 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0060; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

## 441-065-0190

### Reports

(1) For offerings registered pursuant to OAR 441-065-0220, 441-065-0230 or 441-065-0240, the Director may, as a condition of registration, require the issuer to file one or more sales reports. If such a report is required as a condition of registration, the report shall be in a form specified by the Director.

(2) For offerings registered pursuant to OAR 441-065-0225, the issuer shall file the following reports with the Director:

(a) If the offering is made pursuant to **SEC Regulation D**, a copy of any completed Form D with appropriate state signature pages which shall be filed at the same time that the Form D is filed with the Securities and Exchange Commission; or

(b) If the offering is not made pursuant to **SEC Regulation D**, a report on a form and at times specified by the Director as a condition of registration.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.085

Stats. Implemented: ORS 59.085

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0065; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

**441-065-0200****Records**

The issuer shall, for a period of three years following the termination of the offering, maintain and keep open for inspection by the Director:

- (1) Records relating to purchaser representatives used and materials and data relied upon to determine the qualifications of the purchaser representatives;
- (2) Records relating to purchasers and materials and data relied upon to determine the qualifications of the purchasers;
- (3) Records relating to securities sales following the close of the offering that are considered as part of the offering; and
- (4) All offering materials used in connection with offerings registered under OAR 441-065-0220 through 441-065-0240.

Stat. Auth.: ORS 59.235

Stats. Implemented: ORS 59.235

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0070; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

**441-065-0210****Waiver of Provisions**

The Director may, by Order, modify or waive any requirement of OAR 441-065-0060 through 441-065-0240. The applicant for waiver must provide proof and arguments, pursuant to OAR 441-011-0020, that the action requested is consistent with the Oregon Securities Law and that the investors are otherwise adequately protected.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0075; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

**441-065-0220****Small Offering Registration Procedure for Offerings not Exceeding \$500,000 (Including Under SEC Rule 504)**

- (1) General Requirements. An applicant for registration pursuant to this rule must comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.
- (2) Specific Requirements and Limitations. In addition to the provisions of section (1) of this rule, an applicant for registration must comply with the following specific requirements and limitations:
  - (a) The total of the amount being registered, plus the aggregate offering price of all securities of the issuer sold within or outside this state within the 12 months preceding the effective date of the order of registration, plus the aggregate offering price of all securities of the issuer sold within or outside this state during the course of the offering being

registered, where the securities are sold in reliance on Section 3(b) of the Securities Act of 1933 or in violation of Section 5(a) of that Act, may not exceed \$500,000; and

(b) No limits are placed upon the number of persons who may purchase securities registered pursuant to this rule.

(3) Purchaser Qualifications. Sales of securities registered pursuant to this rule may only be made to purchasers in one or more of the following categories:

(a) Accredited investors;

(b) Permitted Oregon purchasers;

(c) Sophisticated purchasers; or

(d) Suitable purchasers.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0080; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

#### **441-065-0225**

#### **Small Corporate Offering Registration Procedure for Offerings not Exceeding \$1,000,000 (Under SEC Rule 504)**

(1) General Requirements. An applicant for registration pursuant to this rule must comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Specific Requirements and Limitations. In addition to the provisions of section (1) of this rule, an applicant for registration must comply with the following specific requirements and limitations:

(a) The issuer must be a corporation organized under the laws of one of the states or possessions of the United States;

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

(c) The offering must not be a "blind pool" or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified;

(d) If the offering includes debt securities, the application for registration must include information that demonstrates the ability of the issuer to service its debt;

(e) The offering price for any common stock (and the exercise price, if the securities offered are options, warrants or rights for common stock, and the conversion price if the securities are convertible into common stock) registered under this rule must be equal to or greater than \$5 per share. In addition, the issuer shall not be permitted to split its common stock or declare a stock dividend for two years after the effectiveness of the registration without the prior written approval of the Director;

(f) The total of the amount being registered, plus the aggregate offering price of all securities sold within or outside the state within the 12 months preceding the effective date of the order of registration, plus the aggregate offering price of all securities of the issuer sold within or outside the state during the course of the offering being registered, where the securities are sold in reliance on section 3(b) of the Securities Act of 1933 or in violation of Section 5(a) of that Act,

may not exceed \$1,000,000;

(g) The issuer must not be an investment company within the meaning of Section 3 of the Investment Company Act of 1940;

(h) The issuer must not be subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934; and

(i) No limits are placed upon the number of persons who may purchase securities registered pursuant to this rule.

(3) Purchaser Qualifications. Sales of securities registered pursuant to this rule may only be made to purchasers in one or more of the following categories:

(a) Accredited investors;

(b) Permitted Oregon purchasers;

(c) Sophisticated purchasers;

(d) Suitable purchasers; or

(e) Persons who purchase directly from the issuer.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: FCS 4-1992, f. & cert. ef. 10-1-92

#### **441-065-0230**

#### **Limited Offering Registration Procedure for Offerings not Exceeding \$5,000,000 (Including Under SEC Rule 505)**

(1) General Requirements. An applicant for registration pursuant to this rule must comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Specific Requirements and Limitations. In addition to the provisions of section (1) of this rule, an applicant for registration must comply with the following specific requirements and limitations:

(a) The total of the amount being registered, plus the aggregate offering price of all securities of the issuer sold within or outside this state within the 12 months preceding the effective date of the order of registration, plus the aggregate offering price of all securities of the issuer sold within or outside the state during the course of the offering being registered, where the securities were sold in reliance on section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that Act, may not exceed \$5,000,000; and

(b) The total number of non-accredited, counting purchasers may not exceed 35.

(3) Purchaser Qualifications. Sales of securities registered pursuant to this rule may only be made to purchasers in one or more of the following categories:

(a) Accredited investors;

(b) Permitted Oregon purchasers;

(c) Sophisticated purchasers; or

(d) Suitable purchasers.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0085; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92

#### **441-065-0240**

### **Non-Public Registration Procedure for Offerings Having No Limits on Amount of Offering (Including Under SEC Rule 506)**

(1) General Requirements. An applicant for registration pursuant to this rule must comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Specific Requirements and Limitations. In addition to the provisions of section (1) of this rule, an applicant for registration must comply with the following specific requirements and limitations:

(a) No limits are imposed on the aggregate offering price; and

(b) The total number of non-accredited, counting purchasers may not exceed 35.

(3) Purchaser Qualifications. Sales of securities registered pursuant to this rule may only be made to purchasers in either or both of the following categories:

(a) Accredited investors; or

(b) Sophisticated purchasers.

Stat. Auth.: ORS 59.065

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0090; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; Suspended by FCS 2-1997(Temp), f. & cert. ef. 10-6-97

## **Registration of Securities Involving Real Estate Paper**

#### **441-065-0250**

### **Definitions**

The following definitions are adopted for the purpose of this Division:

(1) An "agency transaction" is defined as a transaction in securities where one person acts for the account of another person.

(2) A "generic registration" of securities is defined as a registration procedure where a variety and series of securities to

be offered is registered based on a gross dollar volume.

(3) A "participation" or "fractional interest" is defined as a transaction where several investors are given an interest in a single mortgage, trust deed, or single land sales contract. This is sometimes referred to as a "split".

(4) A "pooled investment or interest" is defined as a transaction where the investor is given a partial interest along with other investors, in more than one mortgage, trust deed, or land sales contract.

(5) A "principal transaction" is defined as a transaction in mortgage broker securities where a person sells or deals for the person's own account or for the account of an affiliate, officer, director or person holding a similar position with the principal.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.065

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0005

## **441-065-0260**

### **Optional Registration Procedures for Securities Involving Real Estate Paper**

(1) Creation of Classification. A classification of "mortgage broker offering" is created.

(2) Optional Mechanisms for Registration. An applicant for registration of a mortgage broker offering may elect to register the offering under this rule in lieu of following the full registration procedure by:

- (a) The filing of a generic registration covering a series of offerings; and
- (b) The filing of a specific offering for a specified security which incorporates by reference documents filed under subsection (a) of this section.

(3) Registration Procedure:

- (a) All registrations shall be filed on forms provided by the Director;
- (b) The registrant shall file, along with the registration form, two copies of the proposed offering documents;
- (c) The registration, when granted, will be effective for one year from the date of registration;
- (d) If any material changes are made or occur concerning the offering, these changes must be filed with the Director, and an amendment of the registration order must be obtained before further sales are made; and
- (e) The registrant must file with the Director all advertising materials before they are used.

(4) Retention of Documents. Documents, including specific offering materials and records, concerning purchasers and investors must be kept by the registrant for whichever of the following periods is longest:

- (a) Four years from the date of sale;
- (b) As long as the registrant, or principals of the registrant remain obligated to make payments or deliver documents on loan transactions; or
- (c) As long as the registrant is obligated to provide servicing in connection with the transaction.

(5) Use of Legend. The offering document used in connection with a registered mortgage broker offering shall contain the following legend set out in a prominent place in the document:

**"This offering has been registered with the Director of the Department of Consumer and Business Services of the State of Oregon as a mortgage broker offering under the provision of OAR 441-065-0260.**

**Registration does not constitute an endorsement or recommendation by the Director. It is not a representation that the Director has passed upon or reviewed the accuracy or values claimed. Any representation to the contrary is a criminal offense".**

(6) Limitations on the Use of the Generic Registration Procedure:

(a) The following types of securities cannot be offered or sold under a generic registration of securities unless written permission is obtained from the Director based upon a showing that the investors are adequately protected:

(A) Construction loans and loans exceeding 90 percent of the property and improvements that are in place. Offerings involving construction loans and loans exceeding 90 percent of the value of the property including existing improvements may not be sold as part of a generic registration. These have to be registered separately. An offering exceeds 90 percent of the value of the property and existing improvements if the principal amount of the note secured by a mortgage or trust deed or land sale contract together with the unpaid principal amount of any encumbrances on the property, plus unpaid interest to date of the transaction, exceeds 90 percent of the reasonable market value of the real property including improvements;

(B) Principal Transaction. Offerings involving the broker, its officers, agents, affiliates, and persons controlling the broker or affiliates may not be sold as part of a generic registration unless the registration with the Director includes a full description of these transactions. An offering "involves" the persons listed where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups;

(C) Offerings involving documents reserving the right to subordinate the investor's position. Offerings involving real estate paper which reserve the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale may not be sold under a generic registration;

(D) Offerings to more than ten persons. Offerings involving pooling or participations involving more than ten investors may not be sold under a generic registration. However, where only first liens are involved, the registrant may apply for a modification to allow sales up to 25.

(b) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.065

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0045

## **441-065-0270**

### **Compensatory Benefit Plans and Contracts**

(1) Creation of Classifications. There are created the following classifications of transactions in securities for purposes of registration pursuant to ORS 59.065:

- (a) An offering by an issuer which fully complies with the provisions of **SEC Rule 701 (17 CFR §230.701)**; or
  - (b) An offering relying on a similar federal statute or rule, and designed to meet the requirements of this rule as an offering relating to certain compensatory benefit plans and contracts.
- (2) Preconditions for Application. An applicant for registration pursuant to this rule must meet all of the following conditions at the time of application to register:
- (a) Registration is only available to the issuer of the subject securities. It is not available to affiliates of the issuer or any other person for reselling the subject securities;
  - (b) Registration is only available to an issuer who is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (**15 U.S.C. 78a et seq.**) and is not an investment company registered or required to be registered under the Investment Company Act of 1940 (**15 U.S.C. 80a-1 et seq.**);
  - (c) Registration is only available for the offer and sale of securities to be issued in compensatory circumstances. Registration under this rule is not available for purposes of raising capital;
  - (d) The subject securities must be offered and sold pursuant to a written compensatory benefit plan which is a purchase, savings, option, bonus, stock appreciation, profit sharing, thrift, incentive, pension or similar plan, or written contract, established by the issuer, its parent or majority-owned subsidiary; and
  - (e) The benefit plan or contract must have been established for the participation of the employees, directors, general partners, trustees (where the issuer is a business trust), officers, consultants or advisers of the issuer, its parent or majority-owned subsidiaries; provided, that in the case of consultants or advisers, that bona fide services shall be rendered by consultants or advisers and such services must not be in connection with the offer and sale of securities for purposes of raising capital.
- (3) Application to Register. An applicant who satisfies the requirements of section (2) of this rule shall file an Application to Register Securities. A complete Application must include the following items:
- (a) A completed Form U-1 (Application to Register Securities available from the Securities Section), but the applicant need not include the documents otherwise required to be filed under section 8 of Form U-1;
  - (b) A registration fee in an amount calculated in accordance with ORS 59.065;
  - (c) At least one completed Application to License a Salesperson on Form U-4 and license fee in an amount calculated in accordance with ORS 59.165. The salesperson must be a bona fide affiliate of the issuer, its parent or majority-owned subsidiary, and must either:
    - (A) Be an officer, director, general partner or trustee of the issuer, its parent or majority-owned subsidiary; or
    - (B) Have significant involvement in the administration of the benefit plan or contract.
  - (d) The most current Form 701 (**17 CFR §239.701**) as filed with the Securities and Exchange Commission pursuant to **SEC Rule 702(T) (17 CFR §230.702(T))**. If a Form 701 has not been filed, the following information in written form:
    - (A) Type of business organization;
    - (B) Full title of plan or description of contracts;
    - (C) Type of plan;
    - (D) Affirmation that the offering is for compensatory purposes and not for purposes of raising capital;
    - (E) Dollar amount and number of securities sold pursuant to **17 CFR §230.701**, OAR 441-065-0060 through 441-065-

0240 if relating to a compensatory benefit plan or contract and this rule, to date of this application;

(F) Dollar amount and number of securities sold pursuant to **17 CFR §230.701**, OAR 441-065-0060 through 441-065-0240 if relating to a compensatory benefit plan or contract and this rule, for the 12 month period immediately preceding this application; and

(G) Aggregate offering price of securities to be offered or sold pursuant to this application.

(e) An election regarding expiration date of an Order of Registration pursuant to section (7) of this rule;

(f) Any supplementary materials requested by the Director.

(4) Limitations on Aggregate Offering Price:

(a) For purposes of this rule, the term "aggregate offering price" shall have the same meaning as set forth in **17 CFR §230.701(4)**;

(b) In calculating the aggregate offering price, the following amounts must be included:

(A) The amount of securities sold pursuant to OAR 441-065-0060 through 441-065-0240 if the securities were sold pursuant to an employee benefit plan or contract; and

(B) The amount of securities sold pursuant to this rule.

(c) An Application to Register Securities filed pursuant to this rule shall not exceed the greater of \$500,000 or the amount as determined according to paragraph (A) or (B) of this subsection; however, in no event may the aggregate offering price of securities registered pursuant to this rule plus securities of the issuer subject to outstanding offers, or sold in the preceding 12 months, in reliance on **17 CFR §230.701**, OAR 441-065-0060 through 441-065-0240 if relating to a compensatory benefit plan or contract and this rule, exceed \$5,000,000:

(A) Fifteen percent of the issuer's total assets as of the end of the issuer's last fiscal year, less the aggregate offering price of:

(i) Securities of the issuer subject to outstanding offers in reliance on **17 CFR §230.701**, OAR 441-065-0060 through 441-065-0240 if relating to a compensatory benefit plan or contract, and this rule; and

(ii) Securities of the issuer sold in the preceding 12 months in reliance on **17 CFR §230.701**, OAR 441-065-0060 through 441-065-0240 if relating to a compensatory benefit plan or contract, and this rule; or

(B) Fifteen percent of the issuer's total outstanding securities of the class being registered, less the total number of:

(i) Securities of the class subject to outstanding offers in reliance on **17 CFR §230.701**, OAR 441-065-0060 through 441-065-0240 if relating to a compensatory benefit plan or contract, and this rule; and

(ii) Securities of the class sold in the preceding 12 months in reliance on **17 CFR §230.701**, OAR 441-065-0060 through 441-065-0240 if relating to a compensatory benefit plan or contract, and this rule.

(C) The outstanding securities of a class shall include securities of that class issuable pursuant to the exercise of outstanding options, warrants, rights or conversion of convertible securities, unless such options, warrants, rights or convertible securities were issued pursuant to this rule. If the securities offered or sold are convertible securities, the number of securities subject to outstanding offers and sold under this paragraph shall be deemed to be the shares of the securities into which such securities may be converted.

(5) Discrete Offering. Subject to the inclusion of certain offers and sales of securities pursuant to OAR 441-065-0060 through 441-065-0240 for purposes of calculating "aggregate offering price" under section (4) of this rule, offers and sales of securities registered pursuant to this rule shall be deemed to be part of a single, discrete offering and shall not be

subject to integration with any other offer or sale by the issuer, whether registered pursuant to other provisions of OAR Chapter 441, Division 065 or otherwise exempt from the registration requirements of ORS 59.055.

(6) Review of Application. An application for registration pursuant to this rule shall be subject to the authority of the Director, pursuant to ORS 59.075, to deny registration or, pursuant to ORS 59.085 and section (8) of this rule, to impose conditions on registration.

(7) Order of Registration. Renewal. An initial Order of Registration, if issued, shall, at the election of the registrant, expire 30 days following the end of the issuer's fiscal year, otherwise, one year after the date of issuance. The election must be made at the time application is made pursuant to section (3) of this rule. An application may be submitted for renewal. An Order of Renewal, if issued, shall expire one year after the date of issuance.

(8) Conditions of Registration. The following conditions shall be imposed upon every Order of Registration or Renewal issued pursuant to this rule:

(a) The issuer, its parent or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan, and a copy of a written contract relating to compensation shall be provided to the parties; and

(b) The Director, pursuant to ORS 59.085, may, by order, impose additional conditions on any registration under this rule.

(9) Order of Registration. Continued Effectiveness. An issuer may rely on this rule with respect to offers made pursuant to this rule prior to the issuer becoming subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (**15 U.S.C. 78a et seq.**), and sales consummating such offers may be made thereafter in reliance upon this rule and an effective Order of Registration or Renewal.

(10) Full Disclosure. No provision of this rule may be construed to modify or eliminate the requirement of any person to comply with the statutory requirements of the Oregon securities laws for providing full and adequate disclosure of all material facts.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 3-1991, f. & cert. ef. 8-23-91

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 75**

**RENEWAL OF SECURITIES REGISTRATIONS**

**441-075-0010**

**General Renewal Procedure**

(1) Except for orders issued pursuant to OAR 441-065-0270(7), every order of registration or renewal automatically expires no later than 12 months from its effective date unless otherwise renewed pursuant to the rules contained in this Division.

(2) Generally, the renewal process shall be accomplished by following all requirements and procedures necessary for initial registration, as supplemented or modified by the requirements set forth in this Division.

Stat. Auth.: ORS 59.075 & 59.285

Stats. Implemented: ORS 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

**441-075-0020**

**Specific Renewal Procedures**

An application for renewal must meet the following requirements:

(1) Timely Application. In order to prevent an automatic expiration of an order of registration or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of registration or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(2) Incomplete Applications. Incomplete applications will not be processed.

- (3) Application Form. An applicant for renewal shall use the same application form used for the initial registration application or most recent renewal.
- (4) Aggregate Offering Amount. A renewal application may be submitted for any aggregate offering amount of securities. An applicant is not limited to renewing unsold portions of previously authorized aggregate offering amounts.
- (5) Fees. An applicant for renewal shall submit the appropriate fees as established pursuant to ORS 59.065.
- (6) Prospectus. An applicant for renewal shall file one copy of the most recent prospectus including supplements.
- (7) Financial Statements. If financial statements are not submitted as part of the prospectus, the applicant for renewal shall file one copy of the most recent annual financial statements, including a balance sheet, statement of income or operations, statement of cash flows, and all accompanying footnotes. The annual financial statements must be current within 135 days of filing the application for renewal, or interim financial statements current within 135 days must also be submitted.
- (8) Additional Documents. An applicant for renewal shall promptly furnish all additional information and documents with respect to the issuer or the securities covered by the renewal application as the Director requests.
- (9) Salesperson Applications. If the offering is not being sold by a licensed broker-dealer, the applicant for renewal shall submit a U-4 salesperson application for each person who will sell securities on behalf of the issuer and the appropriate fees as established pursuant to ORS 59.175. The requirements for issuer salesperson licensing are set forth in OAR 441-175-0120(9).
- (10) Order of Renewal. An order of renewal will be issued by the Director upon receipt and processing of a complete application, unless the Director determines that the application should be denied pursuant to ORS 59.105. An order of renewal will be effective for a period of 12 months from the date of issuance.

Stat. Auth.: ORS 59.075 & 59.285

Stats. Implemented: ORS 59.065 & 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 85**

**CONDITIONS OF REGISTRATION**

**441-085-0010**

**Selling Expenses**

(1) The North American Securities Administrators Association, Inc., has adopted a Statement of Policy regarding Selling Expenses and Selling Security Holders. This rule is designed to parallel, with modifications, the Statement of Policy regarding Selling Expenses and Selling Securities Holders adopted by the North American Securities Administrators Association, Inc. Except as otherwise provided pursuant to sections (5) and (6) of this rule, the provisions of this rule will apply to offerings of securities registered pursuant to ORS 59.065.

(2) Except for offerings by issuers specified in section (5) of this rule, an Application to Register Securities filed pursuant to ORS 59.065 may be denied by the Director pursuant to ORS 59.105(1)(a) or (h) if the selling expenses of the offering exceed 15 percent of the aggregate offering price (before deducting discounts and commissions) as computed only on the portion of the aggregate offering price when and as paid to the issuer.

(3) Selling expenses shall mean:

(a) Total underwriting and brokerage discounts and commissions;

(b) Accountable and non-accountable fees or expenses to be paid to the underwriter or broker-dealer;

(c) Underwriters' attorney fees and expenses paid by the issuer;

(d) Fees payable pursuant to consulting or financial advisory agreements or similar arrangements;

(e) Printing and engraving expenses;

(f) Advertising and other promotional expenses;

(g) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers and other experts; and

(h) Any other expenses incurred by the issuer directly related to the offering and sale of the securities, excluding:

(A) Accountants' fees and expenses;

(B) Issuer's attorney fees and expenses;

(C) Expenses of qualification, including issue taxes and registration fees, for the sale of securities under Federal and State laws; and

(D) Options, future registration rights and rights of first refusal granted to underwriters.

(4) In any event, the selling expenses and all other costs associated with an offering subject to this rule, including those tangible costs set forth in paragraphs (3)(h)(A) through (C) of this rule, must be reasonable. Selling expenses and all other costs associated with an offering subject to this rule which exceed 25 percent of the aggregate offering price (before deducting discounts and commissions) shall be presumed to be unreasonable.

(5) The following offerings by issuers shall not be governed by section (2) of this rule, but selling expenses and other costs in connection with such offerings must be reasonable:

(a) Partnerships, corporations or other similar organizations, formed and operated for the primary purpose of investment in or the operation of or gain from commodity pools;

(b) Partnerships or other similar organizations, other than corporations, formed and operated for the primary purpose of investment in or the operation of or gain from an interest in equipment, including equipment leases;

(c) Partnerships or other similar organizations, other than corporations, formed and operated for the primary purpose of investment in or the operation of or gain from the exploration for oil, gas or other hydrocarbon substances;

(d) Partnerships or other similar organizations, other than corporations, formed and operated for the primary purpose of investment in or the operation of or gain from an interest in real property, including such entities formed to make or invest in mortgage loans;

(e) Offerings by issuers pursuant to OAR 441-065-0030, which shall be subject to OAR 441-065-0030(1)(h);

(f) Offerings by issuers pursuant to OAR 441-065-0035;

(g) Offerings by issuers pursuant to OAR 441-065-0060 through 441-065-0240, which shall be subject to OAR 441-065-0140; and

(h) Offerings by issuers pursuant to OAR 441-065-0270.

(6) An Application to Register Securities that includes selling security holders and is filed pursuant to OAR 441-065-0020 or 441-065-0260 may be denied by the Director pursuant to ORS 59.105(1)(a) unless the following conditions are met:

(a) Selling security holders shall pay a pro rata share of all additional selling expenses that are the result of the inclusion of their securities in the offering; and

(b) The prospectus or offering document shall disclose the amount of selling expenses which the selling security holders shall pay.

(7) With the exception of underwriter's or broker-dealer's discounts or commissions, the provisions of subsections (6)(a) and (b) of this rule shall not apply if:

(a) The security holders have a written agreement with the issuer, that was entered into one year or more prior to the filing of the Application to Register Securities, whereby someone other than the selling security holders has agreed to

pay all of the selling security holders' selling expenses;

(b) The agreement was arrived at through arm's-length negotiations; and

(c) The selling security holders have held their securities for at least one year prior to the filing of the Application to Register Securities.

(8) The Director may, by order, impose a condition requiring the Registrant to file with the Securities Section a written report setting forth the actual amounts of selling expenses and other costs incurred in connection with the offering.

Stat. Auth.: ORS 59.085 & 59.285

Stats. Implemented: ORS 59.085

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

## **441-085-0020**

### **Options to Underwriters**

(1) The North American Securities Administrators Association, Inc., has adopted a Statement of Policy regarding Options and Warrants. This rule is designed to parallel, with modifications, the Statement of Policy regarding Options and Warrants adopted by the North American Securities Administrators Association, Inc. The provisions of this rule shall apply to offerings of securities registered pursuant to ORS 59.065 and OAR 441, Division 065.

(2) Options granted by the issuer to underwriters or other persons as compensation, in whole or in part, for the sale of securities must be reasonable in amount and in terms and conditions under the circumstances of the particular issue. Options which meet all of the following requirements are presumptively reasonable:

(a) The number of shares or units called for by such options does not exceed ten percent of the number of shares or units underwritten for the issuer in the offering;

(b) The options do not exceed five years in total duration;

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

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

(e) The options are nontransferable other than by will or pursuant to the laws of descent and distribution, except to a partner of the underwriter when the underwriter is a partnership or to a stockholder, officer or director of the underwriter or beneficiary of a trust which is a stockholder of such underwriter when the underwriter is a corporation; however, after one year such a transfer may occur providing the option is exercised immediately upon transfer. If not exercised immediately upon transfer, the option shall lapse; and

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

Stat. Auth.: ORS 59.085 & 59.285

Stats. Implemented: ORS 59.085

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 175**

**LICENSING OF BROKER-DEALERS, INVESTMENT  
ADVISERS, AND SALESPERSONS**

**General Provisions**

**441-175-0001**

**Licensing Rule Implementing, 97 OR Laws ch 772 and the National Markets Improvement Act of 1996**

[Hist.: FCS 2-1997(Temp), f. & cert. ef. 10-6-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**441-175-0010**

**Definitions**

As used in these rules:

(1) The term "Associated Person" shall mean any partner, officer, director, or branch manager of a broker-dealer, or investment adviser (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling or controlled by such broker-dealer, or investment adviser, including any employee of such broker-dealer or investment adviser, except that for the purposes of OAR 441-195-0010, 441-195-0070, 441-205-0140, and 441-205-0210, the term "Associated Person" shall not include persons whose functions are only clerical or ministerial.

(2) The term "CRD" means the Central Registration Depository of the National Association of Securities Dealers, Inc. CRD is the computer service maintained by the National Association of Securities Dealers, Inc. to register broker-dealers and salespersons.

(3) The term "The Completion of the Transaction" means:

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

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

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

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

(4) The term "Controlling Security Holder" means a person who exercises control as defined under ORS 59.15(2) or who is directly or indirectly the beneficial owner of more than ten percent of the outstanding voting securities of an issuer.

(5) The term "Director" means the Director of the Department of Consumer and Business Services.

(6) The term "Independent Accountant" means a certified public accountant (CPA) or public accountant (PA), who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.

(7) The term "Interim Financial Statement" means a financial statement prepared at a time other than year end. Interim financial statements must be prepared at month end, may be prepared by management, and must include at least a balance sheet and statement of income or operations. The Focus Report filed with the Securities and Exchange Commission is acceptable as an interim financial statement.

(8) The term "Mortgage Banker", as defined pursuant to ORS 59.15(9), and the term "Mortgage Broker", as defined pursuant to ORS 59.15(10), shall be treated as synonymous classifications for purposes of the licensing requirements of ORS 59.175 and OAR Chapter 441, Division 175.

(9) The term "NASD" means the National Association of Securities Dealers, Inc.

(10) The term "Non-NASD Broker-Dealer" means a broker-dealer who is not a member of the National Association of Securities Dealers, Inc.

(11) The term "SEC" means United States Securities and Exchange Commission.

(12) The term "Securities Section" includes the employees assigned to the Securities Section of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services and the Director of the Department of Consumer and Business Services.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175 & 59.285

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0161; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0065; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

**441-175-0020****Exclusion from Definition of "Broker-Dealer"**

An exclusion from the definition of "broker-dealer" is granted pursuant to subsection (1)(i) of ORS 59.15 to the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

- (1) Any person who effects sales of securities that are exempt pursuant to subsection (13) of ORS 59.025 and OAR 441-025-0040.
- (2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while effecting sales of the securities without special compensation.
- (3) Any person, who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to OAR 441-065-0035 and who does not perform any active solicitation activities in this state.
- (4) Any person who is a licensed real estate broker or any other real estate licensee (associate real estate broker, or a real estate salesperson) acting on behalf of that person's real estate broker provided that all of the following conditions are met:
  - (a) The person is actively licensed with the Oregon Real Estate Commissioner;
  - (b) The person, with respect to securities subject to the Oregon Securities Law, ORS Chapter 59, only effects transactions in securities that are registered pursuant to ORS 59.065, and:
    - (A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or
    - (B) Involve resale of those securities described under paragraph (A) of this subsection; and
  - (c) The person complies with the rules of fair practice pursuant to OAR 441-175-0050.
- (5) The Director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(1)

Stats. Implemented: ORS 59.15(1)

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.1; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0005; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

**441-175-0030****Exclusion from Definition of "Investment Adviser"**

An exclusion from the definition of "investment adviser" is granted pursuant to subsection (6)(b)(I) of ORS 59.15 to the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, mortgage broker or salesperson:

- (1) Any person who conducts no public advertising or general solicitation in this state and whose only clients in this

state are "accredited investors" as that term is defined under the Securities Act of 1933.

- (2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while providing advice, analyses, reports or other advisory services regarding the securities without special compensation.
- (3) Any person who serves as a dealer manager for an exchange offer of securities which has been registered pursuant to OAR 441-065-0035 and who does not perform any active solicitation in this state.
- (4) Any person whose advice, analyses or reports relate only to securities exempted by subsection (13) of ORS 59.025 and OAR 441-025-0040.
- (5) Any person who is a licensed real estate broker or any other real estate licensee (associate real estate broker or real estate salesperson) acting on behalf of the real estate broker provided that the following conditions are met:
- (a) The person is actively licensed with the Oregon Real Estate Commissioner;
- (b) The person, with respect to securities activities, only renders advice, analyses, reports or other advisory services relating to securities that are registered pursuant to ORS 59.065, and:
- (A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or
- (B) Involve the resale of those securities described in paragraph (A) of this subsection; and
- (c) The person complies with the rules of fair practice pursuant to OAR 441-175-0050.
- (6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0240 if the activity is merely an incidental part of the person's usual activities or occupation.
- (7) Any person who is licensed as a mortgage banker or mortgage broker under the provisions of Chapter 508, 1993 Regular Sessions Law and whose performance of advisory services relate solely to securities involving real estate paper, whose performance of the advisory services is solely incidental to the person's conduct of business as a mortgage banker or mortgage broker and who receives no special compensation for such services.
- (8) The Director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(6)

Stats. Implemented: ORS 59.15(6)

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.7; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0010; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-175-0035**

### **Exemption from Definition of "Mortgage Broker"**

An exclusion from the definition of "mortgage broker" is granted pursuant to subsection (10)(b)(F) of ORS 59.15 to any person, not otherwise licensed as a broker-dealer, investment adviser, mortgage broker or salesperson, who is a bona

bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while effecting sales of the securities without special compensation.

Stat. Auth.: ORS 59.15(10)

Stats. Implemented: ORS 59.15(10)

Hist.: FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-175-0040**

### **Exclusion from Definition of "Salesperson"**

An exclusion from the definition of "salesperson" is granted pursuant to subsection (16)(b)(E) of ORS 59.15 to the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Subject to section (5) of this rule, any person, not otherwise excluded as a "broker-dealer" pursuant to ORS 59.15(1) or OAR 441-175-0020, who represents such an excluded person.

(2) Subject to section (5) of this rule, any person, not otherwise excluded as an "investment adviser" pursuant to ORS 59.15(6) or OAR 441-175-0030, who represents such an excluded person.

(3) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to OAR 441-065-0035, while effecting sales of the securities without special compensation.

(4) Any person who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to OAR 441-065-0035 and who does not perform any active solicitation in this state.

(5) Any person who is a real estate licensee, acting through or on behalf of a real estate broker exempt pursuant to OAR 441-175-0020 or 441-175-0030, provided the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities activities, only acts as a salesperson in connection with securities that are registered pursuant to ORS 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve the resale of those securities described in paragraph (A) of this subsection; and

(c) The person complies with the rules of fair practice pursuant to OAR 441-175-0050.

(6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0240 if the activity is merely an incidental part of the person's usual activities or occupation.

(7) Any person who is compensated by a licensed broker-dealer, or investment adviser on a per capita referral basis without regard to present or future fee or commission income from any customer of the licensed broker-dealer, or investment adviser.

(8) The Director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the

exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(16)

Stats. Implemented: ORS 59.15(16)

Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015.12; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0015; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-175-0050**

### **Rules of Fair Practice for Real Estate Licensees**

Any real estate licensee relying on exclusions pursuant to OAR 441-175-0020, 441-175-0030 or 441-175-0040 must comply with the following rules of fair practice:

(1) Advertising. All advertising involving securities registered pursuant to ORS 59.065 and OAR Chapter 441, Division 065 must be filed with the Director before the advertising is used.

(2) Customer Funds and Securities. All customer funds and securities must be segregated from those of the real estate licensee, and:

(a) All customer funds must be deposited in a client trust account which is free from all claims, attachment or levy by creditors of the real estate licensee; and

(b) All customer securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the real estate licensee.

(3) Books and Records. The real estate licensee must create and maintain for the longer of three years or such time period established under rules of the Oregon Real Estate Commissioner, the following books and records pertaining to securities activities:

(a) Records of all securities sales and purchases;

(b) Investor information records;

(c) Trust account transactions;

(d) Discretionary account agreements;

(e) Investor complaints and resolution; and

(f) Financial information of the real estate licensee.

(4) Investory Suitability:

(a) A real estate licensee shall not recommend a securities transaction to an investor unless the real estate licensee has reviewed the terms of the transaction and has reasonable grounds to believe that the recommendation is suitable for the investor on the basis of information furnished by the investor, after reasonable inquiry is made by the real estate licensee, concerning the investor's investment objectives, financial situation and any other information known to and deemed relevant by the real estate licensee;

(b) The requirements of subsection (a) of this section, except for the requirement to review the transaction, may be satisfied if the investment in fact is suitable for the particular investor;

(c) A real estate licensee who is selling securities registered pursuant to OAR 441-065-0060 through 441-065-0240 to "sophisticated purchasers" shall comply with the suitability requirements for such purchasers instead of the requirements of subsection (a) of this section.

(5) Supervision. The responsibility for supervision of all persons engaged by a real estate broker to effect securities transactions or render advisory services is that of the real estate broker. This supervision includes reviewing and authorizing all securities activities of associate real estate brokers and real estate salespersons engaged by the real estate broker.

Stat. Auth.: ORS 59.15 & 59.285

Stats. Implemented: ORS 59.15(1),(6),(10), 59.135 & 59.235

Hist.: CC 6-1981(Temp), f. 10-27-81, ef. 11-2-81; CC 2-1982, f. 1-18-82, ef. 2-1-82; FCS 8-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0025; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-175-0055**

### **Rules of Fair Practice for Mortgage Banker and Mortgage Broker Licensees**

Any mortgage banker or mortgage broker ("licensee") licensed pursuant to Chapter 508, 1993 Regular Session Laws and relying upon exclusion from the definition of "broker-dealer" pursuant to ORS 59.15(1)(h) in connection with the offer and sale of registered offerings of securities involving real estate paper shall comply with the following rules of fair practice:

(1) Securities Registration: All offerings shall be registered pursuant to the provisions of ORS 59.065 and OAR Chapter 441, Division 065.

(2) Salesperson Licensing. All natural persons involved in the offer and sale of securities shall be licensed pursuant to the provisions of ORS 59.175 and OAR 441-175-0120. In addition, the employing mortgage banker or mortgage broker must file material amendments to the salesperson license application pursuant to the provisions of OAR 441-175-0105.

(3) Advertising. All advertising involving the offering must be filed with and accepted by the Director prior to its use.

(4) Supervision: The responsibility for supervision of all persons engaged by a licensee to effect securities transactions is that of the licensee. This supervision includes reviewing and authorizing all securities activities of the licensee's salespersons.

(5) Investor Funds and Securities: All funds received in connection with an offering must be segregated from those of the licensee, and:

(a) All investor funds must be deposited in a client trust account which is free from all claims attachment or levy by creditors of the licensee; and

(b) All investor securities must be held in trust in a secure depository and the securities must be free from all claims, attachment or levy by creditors of the licensee.

(6) Books and Records: The licensee must create and maintain those books and records required under rules of the Director in the administration of Chapter 508, 1993 Regular Session Laws.

(7) Investor Suitability:

(a) A licensee shall not recommend a securities transaction to an investor unless the licensee has reviewed the terms of the transaction and, after reasonable inquiry by the licensee, the licensee has reasonable grounds to believe that the

recommendation is suitable for the investor on the basis of:

- (A) Information furnished by the investor (including the investor's investment objectives and financial situation); and
  - (B) Any other relevant information known to the licensee.
- (b) The requirements of subsection (a) of this section, except for the requirement to review the terms of the transaction, may be satisfied if the investment is in fact suitable for the particular investor;
- (c) Specific investor suitability requirements established pursuant to rule or order of the Director shall take precedence over the general investor suitability requirements of subsection (a) of this section.

Stat. Auth.: ORS 59.235 & 59.285

Stats. Implemented: ORS 59.15(1), 59.135 & 59.235

Hist.: FCS 7-1994, f. & cert. ef. 5-13-94

## **441-175-0060**

### **General Policies and Conditions of Licensing of Broker-Dealers, Investment Advisers and Salespersons**

(1) For purposes of ORS 59.175, a person must be licensed as a broker-dealer or investment adviser as provided in ORS Chapter 59 and this rule. The general categories listed below are provided only as guidelines for persons applying for licensing. Applicants should refer to ORS Chapter 59 for specific information and exemptions. Licensing as a salesperson is specified in OAR 441-175-0120 and 441-175-0130:

- (a) A person transacting a general securities business must be licensed as a broker-dealer as defined in ORS 59.15(1);
- (b) A person conducting an investment advisory business as defined in ORS 59.15(6) must be licensed as an investment adviser or be a broker-dealer licensed without imposition of a condition under ORS 59.215(4).

(2) For purposes of ORS 59.175, a salesperson must be employed by and licensed to an Oregon licensed broker-dealer, mortgage broker, or investment adviser, or a issuer or owner of securities.

(3) A broker-dealer licensed without condition pursuant to ORS 59.165(4) is not required to be separately licensed as an investment adviser. However, a broker-dealer conducting business as an investment adviser pursuant to ORS 59.165(4) shall be subject to all the rules and regulations applicable to investment advisers.

(4) A salesperson licensed to and representing a broker-dealer that conducts business as an investment adviser may only receive compensation for investment adviser representation through the broker-dealer.

Stat. Auth.: ORS 59.175 & 183.310(4)

Stats. Implemented: ORS 59.165, 59.175 & 183.310(4)

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-175-0070**

### **General Licensing Rules for Broker-Dealers, Investment Advisers and Salespersons**

- (1) Incomplete applications will not be processed.
- (2) When all documents and fees have been submitted and reviewed by the Securities Section, a license for the broker-dealer or investment adviser shall be issued unless the Director determines that licensing should be denied on one or more grounds set forth in ORS 59.205 to 59.225.
- (3) All licensees are licensed to conduct business only under the name in which their license is issued by the Director.
- (4) Licenses of non-NASD broker-dealers or investment advisers expire one year after the date of initial licensing. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0165.
- (5) Licenses of NASD broker-dealers expire December 31 of each year. The licensee may renew its license as provided in ORS 59.185 and OAR 441-175-0160.
- (6) Any amendments to an application or license shall be filed in accordance with the provisions of OAR 441-175-0105.
- (7)(a) If any person not licensed in the State of Oregon succeeds to the business and continues the business of a person licensed in Oregon, a new application must be filed. However, the license of the predecessor and predecessor salespersons shall remain effective as the license of the successor for a period of 75 days after the succession, if a completed application is received by the Securities Section within 30 days of the succession. The salespersons to the predecessor who were licensed in Oregon at the time of the acquisition will be licensed to the successor when the new license is issued. A new license will be issued reflecting the date of succession and a new effective date. There will be no charge for the transfer of salesperson licenses from the predecessor to the successor;
- (b) A Form BD or ADV filed by a person that is not licensed when such form is filed and which succeeds to and continues the business of a person licensed in this state shall be deemed an application for licensing filed by that predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form or organization, or change in composition of a partnership and the amendment is filed to reflect these changes.
- (8) If a broker-dealer or investment adviser who is licensed in the State of Oregon is acquired by another person licensed in the State of Oregon, there will be no additional licensing requirements. However, the acquiring party must submit an amended Form BD, or Form ADV pursuant to OAR 441-175-0105. There will be no charge for the transfer of salesperson licenses from the predecessor to the successor.

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.165, 59.175(1), 59.205(2) & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.1; FCS 3-1989, f. & cert. ef. 2-1-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94

## **441-175-0080**

### **Applications for Licensing of Broker-Dealers**

- (1) An applicant for licensing as a NASD broker-dealer must submit:
  - (a) To the NASD/CRD:
    - (A) A completed Form BD (broker-dealer application available from the Securities Section);
    - (B) A broker-dealer licensing fee of \$100;

(C) At least one completed Form U-4 (sales-person application available from the Securities Section) pursuant to OAR 441-175-0130. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer; and

(D) A salesperson licensing fee of \$15 for each salesperson.

(b) To the Securities Section:

(A) The name and CRD number of the sales-person whose application has been filed with the CRD;

(B) A surety bond or letter of credit pursuant to OAR 441-175-0110;

(C) The name of the person or persons designated as supervisor for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Securities Section within 30 days following the change; and

(D) A completed Form 440-2302 (a consent form available from the Securities Section), allowing the Securities Section access to all records of the NASD with respect to the applicant or licensee, including all Form BD filings, all financial information, all files relating to complaints, investigations, all disciplinary proceedings involving the applicant or licensee and all other persons for whom reports are required under Form BD. After initial licensing, materials filed with the NASD are deemed filed with the Securities Section.

(2) An applicant for licensing as a non-NASD broker-dealer must submit to the Securities Section:

(a) A completed Form BD (broker-dealer application available from the Securities Section);

(b) A broker-dealer licensing fee of \$100;

(c) At least one completed Form U-4 (sales-person application available from the Securities Section) pursuant to OAR 441-175-0120. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer;

(d) A salesperson licensing fee of \$15 for each salesperson;

(e) A surety bond or letter of credit pursuant to OAR 441-175-0110;

(f) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Securities Section within 30 days following the change; and

(g) Financial Statements. All financial statements, except interim financial statements, must be a review or an audit, prepared by an "independent accountant", as that term is defined pursuant to OAR 441-175-0010(6), and shall include the following:

(A) Financial statements for the last two years prepared in accordance with generally accepted accounting principles or SEC requirements. These statements must include a balance sheet, statement of income or operations, statement of cash flows, and accompanying footnotes. If an application is made less than 90 days after the end of the applicant's fiscal year, the financial statements shall be for the two most recent fiscal years, not including the most recently completed fiscal year;

(B) For entities with less than two years of operations, the same financial information required in paragraph (2)(g)(A) of this rule must be submitted for the period of operations;

(C) For entities in which the year-end financial statements are dated more than 90 days from the completed application, an interim financial statement current within 90 days, must accompany the application. "Interim financial statements" are defined pursuant to OAR 441-175-0010(7).

(3) All licensees must comply with the provisions of OAR 441-175-0070.

Stat. Auth.: ORS 59.175, 59.195 & 59.285

Stats. Implemented: ORS 59.165, 59.175, 59.185, 59.195 & 59.285

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.2; FCS 16-1988(Temp), f. & cert. ef. 11-21-88; FCS 5-1989, f. & cert. ef. 5-17-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

## **441-175-0100**

### **Applications for Licensing of Investment Advisers**

- (1) An applicant for licensing as an investment adviser must submit to the Securities Section:
  - (a) A completed Form ADV (investment adviser application available from the Securities Section);
  - (b) An investment adviser licensing fee of \$100;
  - (c) At least one completed Form U-4 (salesperson application available from the Securities Section) pursuant to OAR 441-175-0120. All licensed investment advisers must have at least one salesperson licensed continuously throughout the licensing period of the investment adviser;
  - (d) A salesperson licensing fee of \$15 for each salesperson;
  - (e) A surety bond or letter of credit pursuant to OAR 441-175-0110;
  - (f) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Securities Section within 30 days following the change; and
  - (g) Financial Statements. All financial statements must be prepared by an "independent accountant", as that term is defined pursuant to OAR 441-175-0010(6), and shall include the following:
    - (A) For an investment adviser who has or will have custody of client funds or securities or requires or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, an audited balance sheet;
    - (B) For all other investment advisers, a reviewed or compiled balance sheet;
    - (C) The financial statements must be submitted for the last two fiscal years. If an application is made less than 90 days after the end of the applicant's fiscal year, the financial statements shall be for the two most recent fiscal years, not including the most recently completed fiscal year. For persons with less than two years of operations, the same financial statements must be submitted for the period of operations; and
    - (D) If the year-end financial statements are dated more than 90 days from the completed application, interim financial statements within 90 days must accompany the application.
- (2) All licensees must comply with the provisions of OAR 441-175-0070.

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1) & 59.205(2)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94

**441-175-0105****Material Changes, Amendments and Notice of Civil and Criminal Actions**

(1) A broker-dealer or investment adviser applicant or licensee must file an amendment to its application and a broker-dealer, investment adviser, mortgage banker or mortgage broker must file an amendment to the application of their respective salespersons if there is a material change to any information on the original application or previous amendments including:

- (a) Bankruptcy;
- (b) Civil or criminal actions described on the application;
- (c) Change in or additional affiliated business entity name;
- (d) Change in ownership other than as provided in OAR 441-175-0070(7);
- (e) Change in form of organization;
- (f) Change of address; or
- (g) Change in scope of business.

(2) Amendments must be filed within 30 days of the occurrence of the material change. If a completed amendment cannot be filed within 30 days, the applicant or licensee shall file with the Securities Section within the 30 day limit a written notice containing available information, the reasons a complete amendment cannot be timely filed and a specific date on which the completed amendment will be filed.

(3) Amendments to the application shall be made on:

- (a) Form BD for broker-dealers;
- (b) Form ADV for investment advisers; and
- (c) Form U-4 for salespersons.

(4) Amendments to the application shall be filed with:

- (a) The CRD for broker-dealers who are or will be members of the NASD and their salespersons; except for changes in designated supervisor, which shall be filed with the Securities Section; or
- (b) The Securities Section for all other persons.

(5) Filing amendments to a salesperson application shall be the responsibility of both the salesperson and the employing broker-dealer, mortgage banker, mortgage broker, or investment adviser.

(6) There will be no fee required in connection with an amendment filed pursuant to this rule.

Stat. Auth.: ORS 59.175, 59.185 & 59.285

Stats. Implemented: ORS 59.175 & 59.185

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

**441-175-0110**

**Surety Bond; Letter of Credit**

- (1) Every applicant for a license as a broker-dealer, or investment adviser must file with the Director a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule.
- (2) Every person licensed as a broker-dealer or investment adviser must maintain a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule during the period of licensing and for at least six years after the person ceases to be licensed as a broker-dealer or investment adviser.
- (3) In no less than six years after a person ceases to be licensed as a broker-dealer or investment adviser, the person may apply to the Director on forms approved by the Director for release of the surety bond or letter of credit. Unless the Director determines that claims are pending against the person for violation of the Oregon Securities Law, the Director shall release the surety bond or letter of credit.
- (4) A surety bond shall be in a form and on terms approved by the Director in the sum of \$10,000 from a corporation authorized by the Director to transact insurance in the State of Oregon.
- (5) A letter of credit shall be in the form and on terms approved by the Director in the sum of \$10,000 from a financial institution authorized to transact banking business in the State of Oregon.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175(4) & 59.225

Hist.: CC 1-1987, f. & ef. 2-4-87; FCS 1-1987(Temp), f. & ef. 8-7-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 3-1988, f. 2-2-88, cert. ef. 2-3-88; Renumbered from 815-030-0068; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

**441-175-0120****Licensing of Salespersons to Non-NASD Broker-Dealers, Mortgage Bankers, Mortgage Brokers, Investment Advisers, Issuers and Owners of Securities**

- (1) For purposes of ORS 59.175, all salespersons, except salespersons desiring to work for an NASD broker-dealer, must be licensed as provided in this rule.
- (2) The employer must submit to the Securities Section a complete application to license a salesperson, including:
  - (a) A completed Form U-4 (salesperson application available from the Securities Section);
  - (b) A salesperson licensing fee of \$15 for each salesperson;
  - (c) Official notice of a passing score of the appropriate examination, if required for licensing under section (4) of this rule; and
  - (d) If employed by more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser, an undertaking, on Form 440-2131, as provided in section (8) of this rule.
- (3) The following salespersons are exempt from the examination requirements of section (4) of this rule:
  - (a) Salespersons who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;
  - (b) Salespersons licensed to a mortgage banker or mortgage broker for the purpose of selling securities that have been registered pursuant to ORS 59.065 and OAR Chapter 441, Division 065;

(c) Salespersons licensed to an issuer or owner of securities where the securities have been registered pursuant to ORS 59.065 and OAR Chapter 441, Division 065; and

(d) Salespersons licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(4) A salesperson who is not exempt from the examination requirements pursuant to section (3) of this rule is required to pass the S-63 (Uniform Securities Agent State Law Examination) with a minimum score of 70 percent. Investment adviser salespersons may substitute the S-65 (Uniform Investment Adviser State Law Examination) for the S-63. In addition to the S-63 or S-65, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

(a) S-2 or S-7 for a general securities license;

(b) S-2 or S-7 for an investment advisory license;

(c) S-3 for a commodity futures license;

(d) S-5 for an interest rate options license;

(e) S-6 for an investment company, mutual funds or variable contracts license;

(f) S-15 for a foreign currency options license;

(g) S-22 for a limited partnership or tax shelter license;

(h) S-42 for an options license;

(i) S-52 for a municipal bonds license; or

(j) S-62 for a corporate securities license.

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the Director, stating the examination to be replaced, the type of examination, and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the Director. Waivers will be limited to applications showing a minimum of three continuous years of securities related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this state.

(8)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an undertaking on Form 440-2131 (a dual licensing application available from the Securities Section). The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Securities Section of the termination of the employment relationship;

and

(D) An agreement that each employer will license the salesperson with the Securities Section and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940 under common management or control; or

(B) The employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser.

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Securities Section.

(9) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the Director as provided in OAR 441-011-0020;

(b) Salespersons licensed to sell securities of an issuer registered under the Investment Company Act of 1940 do not have to meet the requirements of subsection (a) of this section;

(c) Salespersons licensed to a mortgage banker or mortgage broker are not prohibited from being simultaneously licensed to two or more mortgage bankers or mortgage brokers provided the provisions of section (8) of this rule are met.

(10) Once the requirements of this rule are met, the Securities Section shall issue a license for the salesperson unless the Securities Section determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(11) If the application, the undertaking, any supporting material or any representations made to the Securities Section are inaccurate or incomplete in any material respect, the license shall be void.

(12) License Expiration. A salesperson license issued pursuant to this rule automatically expires without further action of the Director as follows:

(a) The license of an issuer's or owner's salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson licensed to a broker-dealer or investment adviser expires on the same date that the license of the broker-dealer or investment adviser expires;

(c) The license of every salesperson licensed to a mortgage banker or a mortgage broker expires 12 months following the date of issuance or renewal unless otherwise further renewed.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

**441-175-0130****Licensing of Salespersons to NASD Broker-Dealers**

(1) For purposes of ORS 59.175, all NASD salespersons will be eligible for automatic licensing as provided in this rule if:

- (a) The salesperson is licensed by the NASD to a broker-dealer who is a member in good standing of the NASD;
- (b) The salesperson is employed by a broker-dealer who is licensed in Oregon pursuant to ORS 59.175;
- (c) An application to license the salesperson has been submitted to the CRD by the employer as provided in this rule;
- (d) The salesperson has filed with the Securities Section an undertaking as required in section (8) of this rule, if applicable; and
- (e) The salesperson is not disqualified under OAR 441-175-0140.

(2) The employing broker-dealer must submit an application to license a salesperson in Oregon to the NASD/CRD, P.O. Box 9401, Gaithersburg, MD 20898-9401 including:

- (a) A completed Form U-4 (salesperson application available from the Securities Section);
- (b) A salesperson licensing fee of \$15 for each salesperson; and
- (c) Official notice of a passing score of the appropriate examination as required for licensing under section (4) of this rule.

(3) The following salespersons are exempt from the examination requirements of section (4) of this rule:

- (a) Salespersons licensed in Oregon at any time during the two years immediately prior to filing an application. The application must be for the same type of license; or
- (b) Salespersons licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. This exemption is limited to the extent a person has previously taken and passed the examinations required by section (4) of this rule.

(4) A salesperson who is not exempt from the examination requirements pursuant to section (3) of this rule, is required to pass the S-63 (Uniform Securities Agent State Law Examination) with a minimum score of 70 percent. In addition to the S-63, a salesperson is required to pass, with a minimum score of 70 percent, the specific examination which corresponds to the authorized sales activity as follows:

- (a) S-7 for a general securities license;
- (b) S-3 for a commodity futures license;
- (c) S-5 for an interest rate options license;
- (d) S-6 for an investment company, mutual funds or variable contracts license;
- (e) S-15 for a foreign currency options license;
- (f) S-22 for a limited partnership or tax shelter license;

(g) S-42 for an options license;

(h) S-52 for a municipal bonds license; or

(i) S-62 for a corporate securities license.

(5) Limited licensed salespersons may only effect transactions in securities for which their license is issued.

(6) Alternate equivalent examinations will be considered upon a written request to the Director, stating the examination to be replaced, the type of examination and the material covered in the alternate examination. Examinations which have been replaced by a new examination will be accepted as an alternate equivalent examination without written request.

(7) Waiver of the examination requirement will be considered upon a written request to the Director. Waivers will be limited to applications showing a minimum of three continuous years of securities-related activity immediately prior to the application and a pre-existing business relationship with a person who is now in this State.

(8)(a) A person may be licensed simultaneously in Oregon as a salesperson with more than one broker-dealer, mortgage banker, mortgage broker, or investment adviser if all employers enter into an undertaking on a form provided by the Securities Section. The undertaking shall contain the following provisions:

(A) The effective date of the salesperson's employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson by all other employers;

(C) An agreement by each employer to assume joint and several liability with all other employers for any act or omission of the salesperson during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Securities Section of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson with the Securities Section and pay the applicable fees.

(b) No undertaking is required where the employer, a single entity, is licensed in Oregon as both a broker-dealer and an investment adviser; and

(c) Any changes in employment by a salesperson which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Securities Section.

(9) Unless disqualified for automatic licensing in Oregon pursuant to OAR 441-175-0140, the salesperson will be automatically licensed in Oregon upon meeting the requirements as stated in this rule.

(10) If automatic licensing occurs, the effective date of licensing in Oregon will be the Oregon approved date as shown on the CRD.

(11) If the salesperson is disqualified from automatic licensing under OAR 441-175-0140, the Director will either approve the application or deny it pursuant to ORS 59.205 to 59.225. If the Director denies the application, the salesperson will be notified of the facts forming the basis for the denial, the statutory grounds for the denial and the person's right to a hearing under ORS Chapter 183.

(12) A salesperson licensed under this rule is licensed in Oregon only for the same classification for which the salesperson is licensed with the NASD.

(13) If the application, the undertaking, any supporting material or any representations made to the Securities Section are inaccurate or incomplete in any material respect, the license shall be void.

(14) The license for an NASD salesperson expires on December 31 of each year. The NASD broker-dealer shall renew

the salesperson's license as provided in ORS 59.185 and OAR 441-175-0160.

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 4-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0071; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; Administrative Correction 12-4-97

## **441-175-0140**

### **Disqualification from Automatic Licensing**

(1) For purposes of this rule, principal means a person who is engaged in the management of an enterprise including supervision, solicitation, conduct of the enterprise, or training of persons associated with the enterprise. Principal includes sole proprietors, officers, partners, directors, and persons owning ten percent or more of the outstanding voting securities of the enterprise.

(2) A person is not qualified for automatic licensing if the person:

(a) Has been a principal of a broker-dealer or investment adviser which has had its license denied, suspended or revoked by the Director;

(b) Has had a license suspended or revoked by the Director or a previous application for license denied by the Director;

(c) Has been convicted of or pleaded guilty or nolo contendere (no contest) to any felony;

(d) Has been convicted of or pleaded guilty or nolo contendere (no contest) to any misdemeanor involving investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property or bribery, counterfeiting, extortion or gambling;

(e) Has been charged, either individually or as a member of an enterprise in which the person was a principal, with any felony or with a misdemeanor specified in subsection (d) of this section;

(f) Has been enjoined by a court in connection with any investment-related activity or has been found by a court to have violated investment-related statutes or regulations;

(g) Has been found by the Securities and Exchange Commission or the Commodity Futures Trading Commission:

(A) To have made a false statement or omission;

(B) To have violated investment-related statutes or regulations; or

(C) To have been a cause of an investment-related enterprise having its authorization to do business denied, suspended, revoked, or restricted.

(h) Has been the subject of an order by the Securities and Exchange Commission or the Commodity Futures Trading Commission denying, suspending, or revoking a registration or restricting activities;

(i) Has been found by any federal or state regulatory agency:

(A) To have made a false statement or omission or to have been dishonest, unfair, or unethical;

(B) To have violated investment-related statutes or regulations; or

- (C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.
- (j) Has been the subject of an order by any federal or state agency in connection with any investment-related activity;
- (k) Has had any federal or state agency deny, suspend, or revoke a registration or license or otherwise prevent the person from associating with an investment-related business or otherwise discipline the person by restriction of activities;
- (l) Has had any federal or state agency revoke or suspend a professional license as an attorney, accountant, or public contractor;
- (m) Has been found by any self-regulatory organization or commodities exchange:
  - (A) To have made a false statement or omissions;
  - (B) To have violated the rules of the self-regulatory organization or commodities exchange; or
  - (C) To have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted.
- (n) Has been disciplined by expulsion or suspension from membership of any self-regulatory organization or commodities exchange;
- (o) Has been barred or suspended from association with a member of a self-regulatory organization or commodities exchange;
- (p) Has had activities restricted by any self-regulatory organization or commodities exchange;
- (q) Has been the subject of an order issued by a foreign government, court, regulatory agency, or exchange relating to investments or fraud;
- (r) Has been the subject of an investment-related complaint or proceeding initiated by a consumer which:
  - (A) Alleged compensatory damages of \$10,000 or more, fraud, or wrongful taking of property; or
  - (B) Was settled or decided against the person for \$5,000 or more or there were findings of fraud or the wrongful taking of property.
- (s) Is the subject of any complaint, investigation, or proceeding specified in subsections (2)(a) through (r) of this rule;
- (t) Has been denied a securities-related bond or similar instrument, has had such a bond or similar instrument revoked, or has been the cause for payout on such a bond or similar instrument;
- (u) Has any unsatisfied judgments or liens against the person;
- (v) Has failed in business, made a compromise with creditors, filed a bankruptcy petition, or been declared bankrupt;
- (w) Has been a principal of a firm which failed in business, made a compromise with creditors, filed a bankruptcy petition, was declared bankrupt, had a trustee appointed under the Securities Investors Protection Act, or had a direct payment procedure initiated; or
- (x) Has been discharged or permitted to resign based on allegations of:
  - (A) Violations of investment-related statutes, regulations, rules, or investment industry standards of conduct;

(B) Fraud or the wrongful taking of property; or

(C) Failure to supervise in connection with investment-related statutes, regulations, rules, or investment industry standards of conduct.

Stat. Auth.: ORS 59.175 & 59.285

Stats. Implemented: ORS 59.175 & 59.205

Hist.: CC 5-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0072; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-175-0150**

### **Termination or Cancellation of Salesperson License**

(1) A salesperson's license with a broker-dealer, investment adviser, mortgage banker, mortgage broker, issuer or owner, ("employer"), may be terminated at any time by either the salesperson or the employer.

(2) The employer shall provide the Director and the terminated salesperson with written notice of the termination (Form U-5) within 30 days of the termination, with notice to the Director being provided as follows:

(a) If the employer is a NASD broker-dealer, the notice shall be filed with the CRD;

(b) All other employers shall file the notice with the Director of the Department of Consumer and Business Services, Securities Section.

(3) The salesperson may provide the Director and the former employer with written notice of the termination in any form at any time.

(4) The status of the license of a salesperson licensed pursuant to OAR Chapter 441, Division 175 is dependent upon the status of the employer. Therefore, without further action by the Director:

(a) The suspension of the license of the employer suspends the license of the salesperson, however, the end of suspension of the license of the employer automatically reinstates the license of the salesperson;

(b) The revocation, cancellation, withdrawal or expiration of the license of the employer cancels the license of the salesperson;

(c) The suspension of the registration of securities suspends the license of the salesperson licensed to the issuer or owner of the securities; and

(d) The revocation, cancellation, withdrawal or expiration of the registration of securities cancels the license of the salesperson licensed to the issuer or owner of the securities.

(5) Pursuant to OAR 441-014-0060, the Director may immediately suspend or refuse to renew a salesperson license, without prior opportunity for a hearing, upon a showing of a danger to the public health or safety; however, the effected party shall be entitled to a post-action hearing.

Stat. Auth.: ORS 59.175, 59.185 & 59.285

Stats. Implemented: ORS 59.175, 59.185 & 59.225

Hist.: CC 6-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; Renumbered from 815-030-0073; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94

**441-175-0160****Renewal of NASD Broker-Dealer and Sales-person Licenses**

- (1) The licenses of a NASD broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed pursuant to this rule.
- (2) To renew a license, a NASD broker-dealer must submit the following items:
  - (a) To the NASD/CRD, P.O. Box 9401, Gaithersburg, MD, 20898-9401:
    - (A) A broker-dealer renewal fee of \$50; and
    - (B) A salesperson renewal fee of \$15 for each salesperson to be renewed.
  - (b) To the Securities Section, 21 Labor and Industries Building, Salem, OR, 97310, the name of the designated supervisor.
- (3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.
- (4) If a NASD broker-dealer satisfies the Director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the NASD broker-dealer does complete the renewal application by January 31, the Director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(Temp), f. & ef. 1-16-86; CC 1-1987, f. & ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97

**441-175-0165****Renewal of the Licenses of Non-NASD Broker-Dealers or Investment Advisers, and Their Salespersons; Renewal of the Licenses of Salespersons for Mortgage Bankers or Mortgage Brokers**

- (1) The license of a non-NASD broker-dealer or investment adviser (employer), and the licenses of their salespersons, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed pursuant to this rule. The license of a salesperson for a mortgage banker or mortgage broker expires 12 months following the date of original licensing or last renewal unless otherwise renewed pursuant to this rule.
- (2) Timely Application. In order to prevent automatic expiration of an order of licensing or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of licensing or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.
- (3) Incomplete Applications. Incomplete applications will not be processed.
- (4) To renew a license, a non-NASD broker-dealer or investment adviser must submit the following items to the Securities Section, 21 Labor and Industries Building, Salem, OR, 97310:

- (a) A non-NASD broker-dealer or investment adviser renewal form;
  - (b) An amended Form BD or ADV, pursuant to OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;
  - (c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the Securities Section;
  - (d) A salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer;
  - (e) An employer renewal fee of \$50;
  - (f) A salesperson renewal fee of \$15 for each salesperson to be renewed; and
  - (g) Financial information as set forth in section (5) or (6) of this rule.
- (5) An applicant for renewal as a non-NASD broker-dealer must submit the following financial information:
- (a) The latest annual financial statements, audited and prepared by an "independent accountant", as defined pursuant to OAR 441-175-0010(6), including a balance sheet, statement of operations, statement of cash flows and accompanying footnotes;
  - (b) If the latest annual financial statements are not current within 90 days of renewal, an "interim financial statement", as defined pursuant to OAR 441-175-0010(7), including a balance sheet and statement of operations, must be submitted in addition to the annual financial statements.
- (6) An applicant for renewal as an investment adviser must submit the following financial information:
- (a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant", as defined pursuant to OAR 441-175-0010(6);
  - (b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant", as defined pursuant to OAR 441-175-0010(6); and
  - (c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.
- (7) A mortgage banker or mortgage broker (employer) must submit a salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer, and a salesperson renewal fee of \$15 for each salesperson to be renewed.

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 195**

**RECORDS AND REPORTS**

**441-195-0010**

**Customer and Account Records by Broker-Dealers**

(1) Every broker-dealer shall make and keep current a record for each person who becomes a customer after the effective date of this rule, which record shall state the customer's name, whether the customer is legally of age, address, tax identification or social security number, and the signatures of the associated person regularly handling the account and a supervisor designated pursuant to OAR 441-205-0210(2).

(2) Any item of information required by section (1) of this rule need not be contained in the customer's record if, after reasonable inquiry, the customer declines to furnish such item of information and a statement to that effect is placed in such record; provided, however, that the customer's record must state the customer's name, address, and social security or tax identification number.

(3) Every broker-dealer shall make and keep current:

(a) A record or records with respect to each discretionary account which shall include:

(A) The customer's written authorization to exercise discretionary power or authority with respect to such account;

(B) The written approval of a supervisor designated pursuant to OAR 441-205-0210(2) and, if appropriate, the written approval of the person or persons designated pursuant to OAR 441-205-0210(4), of the delegation of discretionary authority;

(C) The written approval of a supervisor designated pursuant to OAR 441-205-0210(2) of each transaction in such account indicating the exact time and date of such approval.

(b) A separate file for all complaints by customers and persons acting on behalf of customers. Such complaints shall be filed alphabetically by customer's name and shall include copies of all material relating to the complaint, and record of what action, if any, has been taken by the broker-dealer. Copies of such material and record of action taken shall be kept in the office through which the customer's account is handled. The complaint file need not include obviously frivolous

material or other communications not connected with a transaction or the disposition of funds, or communications involving routine matters.

(4) Every broker-dealer shall preserve all records required by this rule for a period of not less than six years. The records for the most recent two years shall be kept in an easily accessible place. After the most recent two years, a photograph on film may be substituted for the records for the balance of the required time.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 185-030-0195 and 815-030-0081

## **441-195-0020**

### **Business Records by Broker-Dealers**

(1) Every broker-dealer shall make and keep current the following books and records relating to his business:

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

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

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

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

(A) Securities in transfer;

(B) Dividends and interest received;

(C) Securities borrowed and securities loaned;

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

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

(e) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping) carried by such broker-dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short and, in all cases, the name or designation of the account in which each position is carried;

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

shall be deemed to include instructions between partners and employees of a broker-dealer. The term "Time of Entry" shall be deemed to mean the time when such broker-dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received;

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

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

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

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

(k) A record of the proof of money balances of all ledger accounts in the form of trial balances;

(l) A questionnaire or application for employment executed by each partner, officer, director, salesperson, trader, manager, or any employee handling funds or securities or soliciting transactions or accounts for such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to such person:

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

(B) The educational institutions attended by him and whether or not he graduated therefrom;

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

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

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

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

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

(H) A record of any other name or names by which he has been known or which he has used; provided, however, that if such associated person has been registered with, or his employment has been approved by, the National Association of Securities Dealers, Inc., or the American Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, or the Pacific Coast Stock Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of section (1) of this rule.

(2) This rule shall not be deemed to require a member of a national securities exchange to make or keep such records of transactions cleared for such member by another member as are customarily made and kept by the clearing member.

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

(4) The records specified in section (1) of this rule shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-1 and 815-030-0085

### **441-195-0030**

#### **Records to be Preserved by Certain Broker-Dealers**

(1) Every broker-dealer subject to OAR 441-195-020 shall preserve for a period of not less than six years all records required to be made pursuant to OAR 441-195-0020(1)(a), (b), (c) and (e). The records for the most recent two years shall be kept in an easily accessible place.

(2) Every such broker-dealer shall preserve for a period of not less than three years, with the most current two years being kept in an easily accessible place:

(a) All records required to be made pursuant to subsections OAR 441-195-0020(1)(d), (f), (g), (h), (i), and (j);

(b) All checkbooks, bank statements, canceled checks, and cash reconciliations;

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

(d) Originals of all communications received and copies of all communications sent by such broker-dealer (including interoffice memoranda and communications) relating to his business as such;

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

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

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

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

(i) Every such broker-dealer shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all Articles of Incorporation or Charter, minute books and stock

certificate books;

(j) Every such broker-dealer shall maintain and preserve in an easily accessible place all records required under OAR 441-195-0020(1) until at least three years after the associated person has terminated his employment and any other connection with the broker-dealer;

(k) The records required to be maintained and preserved pursuant to OAR 441-195-0020 and this rule may be immediately produced or reproduced on microfilm and may be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by a broker-dealer, he shall:

(A) At all times have available for examination of his records facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(B) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(C) Be ready at all times to provide, and immediately provide, any facsimile enlargement which may be requested; and

(D) Store separately from the original one other copy of the microfilm for the time required.

(3) If a person who has been subject to OAR 441-195-0020 ceases to be registered pursuant to ORS 59.165 or such other statute dealing with registration, such person shall, for the remainder of the periods of time specified in this rule, continue to preserve the records which he theretofore preserved pursuant to this rule.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-2 and 815-030-0090

## **441-195-0035**

### **Books and Records of General and Restricted Mortgage Brokers**

All mortgage brokers shall have and preserve for a period of not less than six years from the date the financial record was created but in no event later than January 1, 2000, financial records concerning business operations, transactions with customers, and trust account transactions. Books and records shall contain at a minimum:

(1) All checkbooks, bank statements, deposit slips and canceled checks;

(2) General and auxiliary ledgers (or other comparable records) reflecting the assets, liabilities, capital, income and expense accounts;

(3) Documentation to support the source and purpose for each receipt of funds in order that the receipts may be reconciled to bank deposits and to books of the mortgage broker;

(4) Documentation to support all disbursements of funds;

(5) Separate deal files for each customer containing copies of all contracts, letters, notes, and memos for each customer, including written disclosure documents as required under OAR 441-035-0021;

(6) Copies of all written complaints by customers and written record of disposition; and

(7) The requirements of this rule, as they relate to newly created financial records shall end on January 1, 1994,

provided that those financial records must be maintained for a period of six years from the date the record was created, but in no event later than January 1, 2000. After January 1, 1994, licensed mortgage brokers shall keep and maintain the books and records required pursuant to Chapter 508, 1993 Regular Session Laws and OAR Chapter 441, Division 865.

Stat. Auth.: 59.035, 59.045, 59.135, 59.175, 59.195 & 59.245

Stats. Implemented: ORS 59.035(7), 59.045, 59.135, 59.175, 59.195, 59.245 & 59.860

Hist: FCS 16-1988(Temp), f. & cert. ef. 11-21-88; FCS 5-1989, f. & cert. ef. 5-17-89; FCS 2-1994, f. & cert. ef. 1-7-94

## **441-195-0040**

### **Books and Records to be Maintained by Investment Advisers**

(1) Every investment adviser shall make and keep true, accurate, and current the following books and records relating to his investment advisory business:

- (a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (c) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;
- (d) All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser;
- (e) All bills or statements (or copies thereof) paid or unpaid, relating to the business of the investment adviser as such;
- (f) All trial balances, financial statements and internal audit working papers relating to the business of such investment adviser;
- (g) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
  - (A) Any recommendation made or proposed to be made and any advice given or proposed to be given;
  - (B) Any receipt, disbursement or delivery of funds or securities; or
  - (C) The placing or execution of any order to purchase or sell any security; provided, however, that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and provided that, if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication, or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof;

- (h) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities, or transactions of any client;
  - (i) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;
  - (j) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;
  - (k) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication recommending the purchase or sale of a specific security which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper articles, investment letter, bulletin, or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.
- (2) If an investment adviser has custody or possession of securities or funds of any client, the records required to be made and kept under section (1) of this rule shall include:
- (a) A journal or other record showing all purchases, sales, receipts, and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;
  - (b) A separate ledger account for each such client showing all purchases, sales receipts and deliveries of securities, the date and price of each such purchase or sale and all debits and credits;
  - (c) Copies of confirmations of all transactions effected by or for the account of any such client;
  - (d) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount of the interest of each such client and the location of each such security.
- (3) Every investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
- (a) Records showing separately for each such client the securities purchased and sold and the date, amount and price of each such purchase or sale;
  - (b) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client and the current amount of the interest of such client.
- (4) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (5)(a) All books and records required to be made under the provisions of section (1) to subsection (3)(a) of this rule, inclusive, of this rule shall be maintained and preserved in an easily accessible place for a period of not less than six years from the end of the fiscal year during which the last entry was made on such record. The records for the most recent two years shall be kept in an appropriate office of the investment adviser;
- (b) Charter documents, minute books and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
- (6) An investment adviser, before ceasing to conduct or discontinue business as an investment adviser, shall arrange for

and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule.

(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced on microfilm and may be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by an investment adviser, he shall:

(a) At all times have available for examination of his records facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(b) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular records;

(c) Be ready at all times to provide, and immediately provide, any facsimile enlargement which may be requested; and

(d) Store separately from the original one other copy of the microfilm for the time required.

(8)(a) Any book or other record made, kept, maintained and preserved in compliance with OAR 441-195-0020 and 441-195-0030, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall satisfy the requirements of this rule;

(b) A record made and kept pursuant to any provision of section (1) of this rule, which contains all the information required under any other provision of section (1) need not be maintained in duplicate in order to meet the requirements of the other provisions of section (1) of the rule.

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

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.1-3 and 815-030-0095

## **441-195-0050**

### **Reports by Broker-Dealers and Investment Advisers**

(1) General Rule. Every broker-dealer and every investment adviser who takes any discretionary authority from any investment advisory client to execute transactions or has custody of any investment advisory client's securities or funds, shall file reports of financial conditions containing the information required by a form to be supplied or approved by the Director, as follows:

(a) The report shall be filed annually reflecting the financial condition as of the end of the fiscal year;

(b) Whenever the Director so requires, an interim report shall be filed as of the date and within the period specified by the Director.

(2) Nature and Form of Reports. Each report of financial condition filed pursuant to section (1) of this rule shall be prepared and filed in accordance with the following requirements:

(a) The report required by subsections (1)(a) and (b) of this rule of a broker-dealer or investment adviser shall be certified by a certified public accountant or a public accountant who shall be in fact independent; provided, however,

that such report need not be certified if such broker-dealer or investment adviser is a member of the National Association of Securities Dealers and since the date of the previous financial statement or report filed pursuant to this rule:

(A) Said broker-dealer or investment adviser has not transacted a business in securities directly with or for other than members of a national securities exchange, has not carried any margin account, credit balance or security for any person other than a general partner and has not been required to file a certified financial statement with any national securities exchange; or

(B) His or its securities business has been limited to acting as broker (agent) for the issuer, said broker-dealer has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith and said broker-dealer has not otherwise held funds or securities for or owed money or securities to customers; or

(C) His or its securities has been limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interest and said broker-dealer has not carried any margin account, credit balance or security for any securities customer. A broker-dealer or investment adviser who files a report which is not certified shall include in the oath or affirmation required by subsection (2)(b) of this rule a statement of the facts and circumstances relied upon as a basis for exemption from the certification requirements.

(b) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation:

(A) The financial statement and supporting schedules are true and correct; and

(B) Neither the broker-dealer nor investment adviser, nor any partner, officer or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the broker-dealer or investment adviser is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) Extension of Time for Filing Reports. In the event any broker-dealer or investment adviser finds that he cannot file his report for any year within the time specified in section (1) of this rule without undue hardship, he may file with the Director an application for an extension of time to a specified date which shall not be more than 90 days after the date as of which financial condition is reported. The application shall state the reasons for the requested extension and shall contain an agreement to file the report on or before the specified date. The application shall be deemed granted unless the Director, within ten days after receipt thereof, enters an order denying the application.

(4) Exemption. The provisions of section (1) of this rule shall not apply to any broker-dealer registered under the Securities Exchange Act of 1934, provided that such broker-dealer files with, or transmits for filing to, the Director a copy of such report on Form X-17A-5 (or any form in substitution therefor) filed with the Securities and Exchange Commission and verified as provided in section (2) of this rule, not later than the date on which such report is required to be filed with the Securities and Exchange Commission.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.195

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.2 and 815-030-0100

**441-195-0060**

**Notice of Complaint**

(1) Each broker-dealer and each investment adviser who has filed a complaint against any of its partners, officers, directors, or associated persons registered in Oregon, with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, shall send a copy of such complaint to the Director within ten days following its filing with such other agency or bonding company.

(2) A copy of any finding, censure, fine, suspension, or expulsion made as a result of any such complaint shall be filed with the Director within ten days following such action.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.195, 59.205 & 59.235

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0195.2-1, 7-1-76 and 815-030-0105

## **441-195-0070**

### **Discretionary Authority**

(1) No broker-dealer, or any associated person, shall exercise any discretionary power or authority for any customer unless such customer has given prior written authorization to exercise such power or authority to a stated associated person or persons.

(2) This rule shall not apply to transactions in which the broker-dealer's discretion is limited to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.135 & 59.205

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0200 and 815-030-0110

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 205**

**DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

**441-205-0010**

**Dishonest, Fraudulent, Unfair and Unethical Practices**

As used in section (2) of ORS 59.205, the terms "dishonest, fraudulent, or illegal practices or conduct", and "unfair or unethical practices or conduct", separately or in any combination thereof, shall include, but not be limited to, those acts defined herein as "manipulative, deceptive, or fraudulent device or contrivance" or "fraudulent, deceptive or manipulative act or practice".

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2 and 815-030-0115

**441-205-0020**

**General Definition**

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

- (1) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) The making of any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading.
- (3) Any representation by a person that the registration of any person with the Director or the failure of the Director to deny or revoke such registration indicates in any way that the Director has passed upon or approved the financial standing, business, or conduct of any person or the merits of any security or any transaction or transactions therein.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-1 and 815-030-0120

## **441-205-0030**

### **Confirmation of Transaction**

The term "Manipulative, Deceptive, or Fraudulent Device or Contrivance" as used in these rules is defined to include:

(1) Any act of any broker-dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of any security (other than U.S. Tax Savings Notes, U.S. Defense Savings Stamps, or U.S. Defense Savings Bonds, Series E, F, and G), unless such broker-dealer, at or before the completion of each such transaction, gives or sends to such customer at a bona fide address written notification disclosing:

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

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

(2) As used in these rules, the term "Bona Fide Address" means the last-known home address, business address, or post office box of a customer. Copies of the notification may be mailed to an accountant, adviser, bank, or such other person or firm as authorized in writing by the customer. The address of a broker-dealer or the address of an associated person or employee (unless the transaction is for the account of the associated person or employee) is not a "Bona Fide Address" for a customer within the meaning of these rules.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-2 and 815-030-0125

## **441-205-0040**

### **Disclosure of Control**

The term "Manipulative, Deceptive, or Other Fraudulent Device or Contrivance", as used in these rules, is hereby defined to include any act of any broker-dealer controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security, unless such broker-dealer, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73 ef. 9-1-73; Renumbered from 815-030-0205.2-3 and 815-030-0130

## **441-205-0050**

### **Disclosure of Interest in Distributions**

The term "Manipulative, Deceptive or Other Fraudulent Device or Contrivance", as used in these rules, is hereby defined to include any act of any broker-dealer who is acting for a customer or for both such customer and some other person, or of any broker-dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested unless such broker-dealer at or before the completion of each such transaction, gives or sends to such customer written notification of the existence of such participation or interest.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-4 and 815-030-0135

## **441-205-0060**

### **Sales at the Market**

The term "Manipulative, Deceptive, or Other Fraudulent Device or Contrivance", as used in these rules, is hereby defined to include any representation made to a customer by a broker-dealer that such security is being offered to such customer "At the Market" or at a price related to the market price, unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with him.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-5 and 815-030-0140

## **441-205-0070**

### **Use of Pro Forma Balance Sheets**

The term "Manipulative, Deceptive, or Other Fraudulent Device or Contrivance", as used in these rules, is hereby defined to include the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-6 and 815-030-0145

## **441-205-0080**

### **Disclosure and Other Requirements When Extending or Arranging Credit in Certain Transactions**

(1) It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, for any broker-dealer to offer or sell any security to, or to attempt to induce the purchase of any security by, any person in connection with which such broker-dealer, directly or indirectly, offers to extend any credit to or to arrange any loan for such person, or extends any credit to or participates in arranging any loan for such person, unless such broker-dealer, before any purchase, loan or other related element of the transaction is entered into:

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-7 and 815-030-0150

## **441-205-0090**

### **Identification of Quotations**

(1) It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, for any broker-dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of any security by making a fictitious quotation.

(2) It shall constitute an attempt to induce the purchase or sale of a security by making a "Fictitious Quotation", within the meaning of these rules, for any broker-dealer to furnish or submit, directly or indirectly, any quotation for a security to an inter-dealer-quotation system, unless:

(a) The inter-dealer-quotation system is informed, if such is the case, that the quotation is furnished or submitted:

(A) By a correspondent broker-dealer for the account or in behalf of another broker-dealer and, if so, the identity of such other broker-dealer; and/or

(B) In furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) between or among broker-dealers and, if so, the identity of each broker-dealer participating in any such arrangement or arrangements; provided, however, that the provisions of this subparagraph shall not apply if only one of the broker-dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation system.

(b) The inter-dealer-quotation system to which the quotation is furnished or submitted makes it a general practice to disclose with each published quotation, by appropriate symbol or otherwise, the category or categories (paragraphs (2)(a)(A) and/or (B) of this rule) in furtherance of which the quotation is submitted, and the identities of all other broker-dealers referred to in paragraphs (2)(a)(A) and (B) of this rule where such information is supplied to the inter-dealer-quotation system under the provisions of subsection (2)(a) of this rule.

(3) It shall constitute an attempt to induce the purchase or sale of a security by making a "Fictitious Quotation", within the meaning of these rules, for a broker-dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) in furtherance of which two or more broker-dealers furnish or submit quotations with respect to a particular security, unless such broker-dealer informs all broker-dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements and the identity of the parties thereto.

(4) For purposes of this rule:

(a) The term "Inter-Dealer-Quotation System" shall mean any system of general circulation to broker-dealers in Oregon which regularly disseminates quotations of identified broker-dealers, but shall not include a quotation sheet prepared and distributed by a broker-dealer in the regular course of his business and containing only quotations of such broker-dealer;

(b) The term "Quotation" shall mean any bid or offer, or any indication of interest (such as OW or BW) in any bid or offer;

(c) The term "Correspondent" shall mean a broker-dealer who has a direct line of communication to another broker-dealer located in a different city or geographic area.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-8 and 815-030-0155

## **441-205-0100**

### **Discretionary Accounts**

(1) The term "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, is hereby defined to include any act of any broker-dealer or associated person designed to effect with or for any customer's account with respect to which he is vested with any discretionary power, any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(2) The term "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, is hereby defined to include any act of any broker-dealer designed to effect with or for any customer's account with respect to which such

broker-dealer or associated person is vested with any discretionary power any transaction of purchase or sale, unless immediately after effecting such transaction such broker-dealer makes a record of such transaction, which record includes the name of such customer; the name, amount and price of the security; and the date and time when such transaction took place.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-9 and 815-030-0160

## **441-205-0110**

### **Hypothecation of Customer's Securities**

(1) General Provisions. The term "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, is hereby defined to include the direct or indirect hypothecation by a broker-dealer, or his arranging for or permitting, directly or indirectly, the continued hypothecation of any securities carried for the account of any customer under circumstances:

- (a) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation;
- (b) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker-dealer under a lien for a loan made to such broker-dealer; or
- (c) That will permit securities carried for the account of customers to be hypothecated, or subjected to any lien or liens or claims of the pledgee or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day; provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgee for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subject as promptly as practicable after such reduction occurs, but before the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such broker-dealer are payable and, in any event, before such broker-dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(2) Definitions. For the purposes of this rule:

- (a) The term "Customer" shall not be deemed to include any general or special partner or any director or officer of such broker-dealer, or any participant, as such, in any joint, group, or syndicate account with such broker-dealer or with any partner, officer, or director thereof;
- (b) The term "securities carried for the account of any customer" shall be deemed to mean:
  - (A) Securities received by or on behalf of such broker-dealer for the account of any customer;
  - (B) Securities sold and appropriated by such broker-dealer to a customer, except that, if such securities were subject to a lien when appropriated to a customer, they shall not be deemed to be "Securities Carried for the Account of Any Customer" pending their release from such lien as promptly as practicable;
  - (C) Securities sold, but not appropriated, by such broker-dealer to a customer who has made any payment therefor, to the extent that such broker-dealer owns and has received delivery of securities of like kind, except that, if such securities

were subject to a lien when such payment was made, they shall not be deemed to be "Securities Carried for the Account of Any Customer" pending their release from such lien as promptly as practicable.

(c) "Aggregate Indebtedness" shall not be deemed to be reduced by reason of uncollected items. In computing aggregate indebtedness, related guaranteed and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(d) In computing the sum of the liens or claims to which securities carried for the account of customers of a broker-dealer are subject, any rehypothecation of such securities by another broker-dealer who is subject to this rule shall be disregarded.

(3) Exemption for Cash Accounts. The provisions of subsection (1)(a) of this rule shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System; provided that, at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers.

(4) Exemption for Clearing Liens. The provisions of subsections (1)(b) and (c), and section (6) of this rule shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange or a registered national securities association, for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department, or association; provided, however, that for the purpose of subsection (1)(c) of this rule, "Aggregate Indebtedness of All Customers in Respect of Securities Carried for Their Accounts" shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.

(5) Exemption for Certain Liens on Securities of Noncustomers. The provisions of subsection (1)(b) of this rule shall not be deemed to prevent such broker-dealer from permitting securities not carried for the account of a customer to be subjected:

(a) To a lien for a loan made against securities carried for the account of customers; or

(b) To a lien for a loan made and to be repaid on the same calendar day. For the purpose of this exemption, a loan shall be deemed to be "made against securities carried for the account of customers" if only securities carried for the account of customers are used to obtain or to increase such loan or as substitutes for other securities carried for the account of customers.

(6) Notice and Certification Requirements. No person subject to this rule shall hypothecate any security carried for the account of a customer unless, at or prior to the time of each such hypothecation, he gives written notice to the pledgee that the security pledged is carried for the account of a customer and that such hypothecation does not contravene any provision of this rule, except that, in the case of an omnibus account, the broker-dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried therein by such broker-dealer will be securities carried for the account of his customers and that the hypothecation thereof by such broker-dealer will not contravene any provision of this rule. The provisions of this clause shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(7) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by subsection (1)(a) or (b) of this rule, whenever a participating broker-dealer hypothecates securities in accordance with such system; provided, however, that:

(a) Any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right, or lien of any kind, refuse or refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure, or similar notice or order, or judgment, issued or directed by a governmental agency or court or officer thereof, having jurisdiction over such custodian, which on its face affects such securities;

(b) Such systems shall have safeguards in the handling, transfer, and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and

(c) The provisions of section (7) of this rule shall not be effective with respect to any particular system unless the agreement required by subsection (a) of this section and the safeguards and provisions required by subsection (b) of this section shall have been deemed adequate by the Director or the Securities and Exchange Commission for the protection of investors, and unless any subsequent amendments to such agreements, safeguards, or provisions shall have been deemed adequate by the Director or the Securities and Exchange Commission for the protection of investors.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-10 and 815-030-0165

## **441-205-0120**

### **Transmission or Maintenance of Payments Received in Connection With Underwritings**

It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, for any broker-dealer participating in any distribution of securities, other than a firm commitment underwriting, to accept any part of the sale price of any security being distributed unless:

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

(2) If the distribution is being made on an "all-or-none" basis, or subject to an order of the Director under ORS 59.085 (3)(b), or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:

(a) The money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) All such funds are promptly transmitted to an escrow agent who has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-11 and 815-030-0170

**441-205-0130****Fair Dealing with Customers**

The term "Manipulative, Deceptive, or Other Fraudulent Act or Practice", as used in these rules, is hereby defined to include:

- (1) Recommending speculative low-priced securities to customers without knowledge of or attempt to obtain information concerning the customers' other securities holdings, their financial situation, and other necessary data.
- (2) Trading in mutual fund shares on a short-term basis.
- (3) Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.
- (4) In any transaction for or with a customer failing to use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.
- (5) In any transaction for or with a customer, interjecting a third party between a broker-dealer and the best available market, except in cases where the broker-dealer can demonstrate that, to his knowledge at the time of the transaction, the total cost or proceeds of the transaction, as confirmed to the broker-dealer acting for or with the customer, was better than the prevailing inter-dealer market for the security.
- (6) Failing to make a bona fide public distribution at the public offering price of securities of a public offering which immediately trade at a premium in the secondary market, regardless of whether such securities are acquired by the broker-dealer as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member, or otherwise.
- (7) Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited, such as the purchase of "Hot Issues".
- (8) Causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon.
- (9) Giving, permitting to be given, or offering to give, directly or indirectly, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security; provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.
- (10) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer.
- (11) Sharing directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or any other broker-dealer, unless such broker-dealer or person associated with a broker-dealer obtains prior written authorization from the broker-dealer carrying the account; and unless such a broker-dealer or person associated with such broker-dealer shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the broker-dealer or person associated with a broker-dealer; provided, however, that this subsection shall not apply to accounts of the immediate family of such broker-dealer or person associated with a broker-dealer. For purposes of this rule, "Immediate Family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or person associated with a broker-dealer otherwise contributes directly or indirectly.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-12 and 815-030-0175

## **441-205-0140**

### **Suitability of Recommendations**

It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, for any broker-dealer or associated person to recommend to a customer the purchase, sale, or exchange of any security, unless such broker-dealer or associated person shall have reasonable grounds to believe that the recommendation is suitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such broker-dealer or associated person.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-13; CC 2-1981, f. & ef. 6-2-81; Renumbered from 815-030-0180

## **441-205-0165**

### **Investment Adviser Brochure**

It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice" as used in these rules for any investment adviser to enter into or offer to enter into an investment advisory contract, or in any way perform an investment advisory contract, if the investment adviser:

(1) Fails to provide the customer with a written disclosure statement which may be either a copy of Part II of Form ADV or a written document containing at least the information required by Part II of Form ADV:

(a) At least 48 hours prior to entering into any written or oral investment advisory contract with a customer; or

(b) At the time of entering into any advisory contract, if the customer has a right to terminate the contract without penalty within five business days after entering the contract.

(2) Fails to offer an existing customer a copy of the written disclosure statement, without charge, at least annually.

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.205(2)

Hist.: FCS 8-1994, f. & cert. ef. 6-1-94

## **441-205-0170**

### **Compensation of Investment Advisers**

(1) The term "Fraudulent, Deceptive, or Manipulative Act or Practice", as used in these rules, is hereby defined to include entering into, extending, or renewing any investment advisory contract, or in any way performing any

investment advisory contract entered into, extended or renewed after the effective date of this rule, if such contract:

- (a) Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client, except as may be permitted by rule of the Director;
  - (b) Fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or
  - (c) Fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.
- (2) As used in this rule, "Investment Advisory Contract" means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account for a person other than an investment company, as defined in the Investment Company Act of 1940, as amended.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-2005.2-14 and 815-030-0185

## **441-205-0180**

### **Custody or Possession of Funds or Securities of Clients by Investment Advisers**

- (1) It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice", within the meaning of these rules, for any investment adviser who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:
- (a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and
  - (b)(A) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds;
  - (B) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and
  - (C) The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account and the exact amount of each client's beneficial interest in such account; and
  - (c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and
  - (d) Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period; and
  - (e) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant. A certificate of such accountant, stating that he has made an examination of such funds and securities and describing the nature and extent of such examination, shall be filed with the Director promptly after such examination.

(2) This rule shall not apply to an investment adviser also registered as a broker-dealer under ORS 59.165.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-15 and 815-030-0190

## 441-205-0190

### Disclosure of Capacity

It shall constitute a "Manipulative, Deceptive, or Other Fraudulent Act or Practice", within the meaning of these rules, for an investment adviser acting as principal for his own account, knowingly to sell any security to or purchase any security from a client for whom he is acting as investment adviser, or acting as broker-dealer for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the consent of the client to such transaction.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0205.2-16 and 815-030-0196

## 441-205-0200

### Advertisements by Investment Advisers

(1) It shall constitute a "Fraudulent, Deceptive, or Manipulative Act or Practice", within the meaning of these rules, for any investment adviser, directly or indirectly, to publish, circulate, or distribute any advertisement:

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

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

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

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

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

advertisement the limitations thereof and the difficulties with respect to its use; or

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

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

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

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

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

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

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(2)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-205-0210.2-17 and 815-030-0201

## **441-205-0210**

### **Supervision of Associated Persons**

(1) Every broker-dealer shall exercise diligent supervision over the securities activities of all of his associated persons.

(2) Every associated person of the broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager, or any other qualified associated person.

(3) As part of his responsibility under this rule, every broker-dealer shall establish, maintain, and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the broker-dealer to comply with the following duties imposed by this rule, and shall state at which business office or offices the broker-dealer keeps and maintains the records required by OAR 441-195-0010:

(a) The review and written approval by the designated supervisor of the opening of each new customer account;

(b) The frequent examination of all customer accounts to detect and prevent irregularities or abuses, including a review for churning and switching of securities in customers' accounts, as well as unsuitable recommendations and sales of unregistered securities;

(c) The prompt review and written approval by the designated supervisor of all securities transactions by associated persons and all correspondence pertaining to the solicitation or execution of all securities transactions by associated persons;

(d) The review of back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of "Fails to Receive" and "Fails to Deliver", net capital, credit extensions and financial reports;

- (e) The review of form, content, and filing of all correspondence related in any way to the purchase or sale or solicitation for the purchase or sale of securities;
- (f) The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to his account to a stated associated person or persons of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and
- (g) The prompt review and written approval of the handling of all customer complaints. As used in these rules, a "Complaint" is considered to be any written statement by a customer, or by any person acting for a customer, which complains about the activities of the broker-dealer or any associated person in connection with the solicitation or execution of a transaction or the disposition of funds of that customer.
- (4) Every broker-dealer who has designated more than one supervisor pursuant to section (2) of this rule shall designate from among his partners, officers, or other qualified associated persons, a person or group of persons who shall periodically inspect each business office of the broker-dealer to insure that the written procedures are enforced.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.205(13)

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-205-0210.12 and 815-030-0205

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 225**

**CANCELLATION, WITHDRAWAL, OR SUSPENSION OF LICENSE**

**441-225-0010**

**Cancellation, Withdrawal and Suspension of the License for Broker-Dealers, Mortgage Brokers, Investment Advisers, and Salespersons**

- (1) The procedure for cancellation of a license for failure to maintain a bond as required by ORS 59.175 (4) is:
- (a) Upon notification from the surety of notice of intent to cancel the surety bond, the Securities Section shall send written notice to the licensee. This notice shall be sent by certified mail within three business days of receipt of notification from the surety. Failure to send the notice within three business days will not preclude cancellation under subsection (1)(b) of this rule;
  - (b) Cancellation of the license will occur if an effective bond is not received by 5 p.m. Pacific Time seven business days after the bond cancellation date. The cancellation of the license shall be effective as of the bond cancellation date;
  - (c) An effective bond is one that commences no later than the cancellation date of the previous bond.
- (2) A person whose license has been cancelled may obtain a license in Oregon by new application.

Stat. Auth.: ORS Ch. 59

Stats. Implemented: ORS 59.175(4) & 59.225(1)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0078

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 300**

**COMMODITIES**

**441-300-0010**

**Depository Receipts**

(1) As used in ORS 645.020, an instrument evidencing receipt of precious metals must comply with ORS Chapter 77 (Warehouse Receipts, Bills of Lading and Other Documents of Title).

(2) In addition to stating the quantity, the receipt must state the quality of precious metal, which shall not be less than minimum investment fineness:

(a) In the case of the following metals minimum investment fineness is:

(A) Gold -- .995;

(B) Silver -- .999;

(C) Platinum -- .9995; and

(D) Paladium -- .999.

(b) In the case of the following metals in coin form, minimum investment fineness is:

(A) Gold -- .900;

(B) Silver -- .900;

(C) Platinum -- .999; and

(D) Paladium -- .999.

Stat. Auth: ORS 645.020 & 645.205

Stats. Implemented: ORS 645.020

Hist.: FCS 2-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 4-1988, f. 3-22-88, cert. ef. 3-25-88; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

## **441-300-0020**

### **Authorized Depositories**

Pursuant to ORS 645.020(2)(a)(D), the Director designates the following depositories:

- (1) Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York, NY 10081.
- (2) CitiBank, 399 Park Avenue, New York, NY 10043.
- (3) Iron Mountain Depository Corporation, 26 Broadway, New York, NY 10004.
- (4) Irving Trust Company, 1 Wall Street, New York, NY 10015.
- (5) Republic National Bank of New York, 450 5th Avenue, New York, NY 10018.
- (6) Swiss Bank Corporation, 4 World Trade Center, New York, NY 10048.
- (7) Marine Midland Bank of New York, 130 Chambers Street, New York, NY 10007.
- (8) Wilmington Trust Company, Rodney Square North, Wilmington, DE 19890.
- (9) Bank of Delaware, 300 Delaware Avenue, Wilmington, DE 19899.

Stat. Auth: ORS 645.020 & 645.205

Stats. Implemented: ORS 645.020

Hist.: FCS 2-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 4-1988, f. 3-22-88, cert. ef. 3-25-88; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 325**

**FRANCHISES**

**441-325-0010**

**Definitions**

All words and phrases in OAR 441 Division 325, have meaning given them in ORS 650.005

Stat. Auth.: ORS Ch. 650

Stats. Implemented: ORS 650.005 & 650.050

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; CC 20, f. 12-12-74, ef. 1-11-75; CC 28, f. 4-9-76, ef. 4-16-76; CC 9-1981, f. & ef. 11-23-81; Renumbered from 815-040-0050; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89

**441-325-0020**

**Pre-Sale Disclosure Requirements**

(1) No franchiser shall sell or offer to sell a franchise in this state unless the franchiser delivers to the prospective franchisee a disclosure statement described in either subsection (a) or (b) of this section:

(a) The disclosure statement required by the Federal Trade Commission Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures", set forth in **16 CFR 436** effective December 21, 1978; or

(b) The Uniform Franchise Offering Circular (UFOC) adopted by the North American Securities Administrators Association, Inc. on April 25, 1993. Disclosure requirements for this rule can be met by using the UFOC as previously amended on October 21, 1979, until the effective date set forth in General Instruction 265 in the April 25, 1993 UFOC format.

(2) The franchiser must deliver the disclosure statement and all proposed agreements relating to the sale of the franchise

to the prospective franchisee at least ten business days before the prospective franchisee executes any agreement relating to the sale of the franchise or at least ten business days before the prospective franchisee pays or is required to pay to the franchiser any consideration for the franchise including refundable deposits, whichever occurs first.

(3) Delivery of the statement and proposed agreements required in this rule is accomplished only when the prospective franchisee, or its authorized representative, actually receives these documents.

(4) Failure to provide timely the disclosure statement and proposed agreements as required under this rule is a violation of ORS 650.020(1).

(5) Compliance with this rule shall not be construed to exempt any person engaged in the sale of a franchise in this state from making such other disclosures as are material.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.020(1) & 650.050

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0055; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89; FCS 9-1994, f. & cert. ef. 8-1-94; FCS 1-1995(Temp), f. & cert. ef. 3-29-95

## 441-325-0030

### Exemptions to Disclosure Requirements

The sale of or offer to sell a franchise is exempt from OAR 441-325-0020 if any of the following circumstances apply:

(1) The sale or offer to sell is exempt or excluded from delivery of a disclosure statement under **16 CFR 436.2(a)(3)** or **(4)** effective the date of this rule.

(2) The sale or offer to sell is a renewal, extension, amendment or modification of an existing franchise agreement if there is:

(a) No interruption in the operation of the franchise relationship;

(b) No material change adverse to the franchisee in the franchise relationship; and

(c) No material change adverse to the franchisee in the disclosure information previously furnished to the franchisee.

(3) The sale or offer to sell is the sale of or offer to sell one or more additional franchises to an existing franchisee and the franchiser furnished a disclosure statement to the franchisee in connection with the prior sale and there has been no material change adverse to the franchisee in the disclosure information previously furnished to the franchisee;

(4) The sale or offer to sell is a sale or offer to sell by a franchisee for the franchisee's own account of a franchise or an entire area franchise if:

(a) The sale or offer to sell is not effected by or through the franchiser. A sale is not effected by or through a franchiser merely because the franchiser has a right to approve or disapprove a different franchisee, requires payment of a reasonable transfer fee, or requires appropriate documents executed;

(b) The franchiser does not aid in the sale;

(c) The sale is an isolated sale, and not a part of a plan of distribution of franchises; and

(d) At least ten business days before the prospective purchaser executes any agreement relating to the sale, or pays or is required to pay to the franchisee any consideration for the franchise or area franchise including any refundable deposit, whichever occurs first, the selling franchisee or subfranchiser has provided the prospective purchaser full access to the books, records, and disclosure statements of the franchise business.

(5) The sale or offer to sell is by a court appointed fiduciary or pursuant to a court order.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 650.050

Stats. Implemented: ORS 650.005(8), 650.020(1) & 650.050

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; CC 9-1981, f. & ef. 11-23-81; Renumbered from 815-040-0060; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89

## **441-325-0040**

### **Offer or Sale of Franchise**

The offer or sale of a franchise by a franchisee for his own account or the offer or sale of the entire area franchise owned by a subfranchiser for his own account, is exempted from the provisions of ORS Chapter 650 if sale is not effected by or through a franchiser, and the franchiser does not participate or aid in the sale thereof. A sale is not effected by or through a franchiser merely because a franchiser has a right to approve or disapprove a different franchisee.

Stat. Auth.: ORS Ch. 650

Stats. Implemented: ORS 650.005(8), 650.020(1) & 650.050

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0065

## **441-325-0050**

### **Relationship to Securities Law**

If any part of a franchise offering is in itself a security, compliance with the Oregon Franchise Law will not obviate the necessity for compliance with the Oregon Securities Law, ORS Chapter 59.

Stat. Auth.: ORS Ch. 650

Stats. Implemented: ORS 59.015(17)

Hist.: CC 17, f. 5-21-74, ef. 6-11-74; Renumbered from 815-040-0070; FCS 17-1988(Temp), f. & cert. ef. 11-21-88; FCS 6-1989, f. & cert. ef. 5-17-89

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### DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE AND CORPORATE SECURITIES

#### DIVISION 500

#### BANKING

#### Definitions

[ED. NOTE: Pursuant to Chapter 373, Oregon Law 1987, the Department of Commerce, Financial Institutions Division was transferred to the Department of Insurance and Finance, Finance and Corporate Securities Division, Oregon Administrative Rules Chapter 441.]

#### 441-500-0000

#### Bank Act Definitions Adopted

The definition of terms in ORS 706.005 and other sections in the Bank Act govern the meaning of terms used in OAR Chapter 441, except where the context otherwise requires.

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 706.005

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-001-0001

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 505**

**BANKING SECTION (IN GENERAL)**

**441-505-0000**

**Reports to Director**

(1) This rule applies only to financial institutions singularly empowered by Chapter 916, Oregon Laws 1987 -- and exercising the power -- to be licensed as insurance agents and/or to invest in the corporate stock of insurance agencies.

(2) Each institution described in section (1) of this rule, shall file a written report with the Director, no later than March 31 each year disclosing the insurance activities of the institution and/or, on a separate report for each, the insurance activities of any insurance agencies of which the institution owns all or a part of the corporate stock. The report, on a form supplied by the Director, shall disclose for the preceding calendar year:

- (a) The total number of insurance policies sold;
- (b) The number of insurance policies sold in each of the classes of insurance described in ORS 744.115(1)(a) to (L) and (n);
- (c) The total premium income from insurance policies sold;
- (d) The total commission income from insurance policies sold;
- (e) Copies of amendments made since the last reporting period to the institution's business plan for insurance activity.

Stat. Auth.: ORS Ch. 705

Stats. Implemented: ORS 707.310, 708.430, 708.434 & 716.588

Hist.: FCS 10-1988, f. & cert. ef. 4-18-88; Renumbered from 805-002-0055; Suspended by FCS 3-1997(Temp), f. 10-6-97

**441-505-0020**

## **Fees of Banks, Trust Companies, Savings Banks, Stock Savings Banks, Bank Holding Companies, Extranational Institutions**

(1) Effective February 1, 1994, the maximum annual fee, which is due and payable on or before March 1 of each calendar year, under ORS 706.530 by each bank, savings bank and stock savings bank with assets of:

- (a) Less than \$10 million, is \$800 plus .000300 of all assets;
- (b) \$10 million or more but less than \$25 million, is \$1,620 plus .000218 of all assets;
- (c) \$25 million or more but less than \$100 million, is \$2,895 plus .000167 of all assets;
- (d) \$100 million or more but less than \$500 million, is \$9,795 plus .000098 of all assets;
- (e) \$500 million or more but less than \$1 billion, is \$22,795 plus .000072 of all assets;
- (f) \$1 billion or more but less than \$2 billion, is \$24,795 plus .000070 of all assets;
- (g) \$2 billion or more but less than \$3 billion, is \$26,795 plus .000069 of all assets;
- (h) \$3 billion or more but less than \$4 billion, is \$29,795 plus .000068 of all assets;
- (i) \$4 billion or more, is \$33,795 plus .000067 of all assets.

(2) Effective February 1, 1994, the maximum annual regulatory fee, which is due and payable on or before March 1 of each calendar year, under ORS 706.540 by each trust company is \$2000 plus:

- (a) .000060826 of the first \$150 million in managed assets; and .000030413 of managed assets greater than \$150 million;
- (b) .0000152065 of the first \$150 million in custodial assets; and .0000076075 of custodial assets greater than \$150 million.

(3) Effective February 1, 1994, the maximum annual regulatory fee, which is due and payable on or before March 1 of each calendar year, under ORS 706.530 by each extranational institution with assets of:

- (a) Less than \$10 million, is \$845 plus .000310 of all assets;
- (b) \$10 million or more but less than \$25 million, is \$2,545 plus .000140 of all assets;
- (c) \$25 million or more but less than \$100 million, is \$3,545 plus .000100 of all assets;
- (d) \$100 million or more but less than \$500 million, is \$6,745 plus .000068 of all assets;
- (e) \$500 million or more, but less than \$1 billion, is \$10,245 plus .000061 of all assets;
- (f) \$1 billion or more but less than \$2 billion, is \$15,245 plus .000056 of all assets;
- (g) \$2 billion or more is \$17,245 plus .000055 of all assets.

(4)(a) As used in sections (1) and (3) of this rule, "assets" means the average assets reported by the bank, savings bank, stock savings bank and extranational institution on its quarterly reports for the four calendar quarters of the calendar year immediately preceding the due date of the fee. However, if a bank, savings bank, stock savings bank or extranational institution was not in existence or doing business in this state during all of the prior calendar year, "assets" means the average of assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee;

(b) As used in section (2) of this rule, "assets" means the total assets as reflected on the trust company's books valued at market value; however, if market values are not readily available, assets may be valued at book values (cost or inventory).

(5) The annual regulatory fee of a banking institution that is a party to a merger or conversion, goes through a reorganization, or is liquidated or dissolved:

(a) Is not subject to refund in whole or in part if the merger, conversion, reorganization, liquidation or dissolution occurs prior to the end of the calendar year for which the fee has been paid;

(b) Is not subject to proration if the banking institution operated during any part of the calendar year during which the merger, conversion, reorganization, liquidation or dissolution occurred.

(6) In addition to the fee set under section (2) of this rule, the Director for a regular examination of a trust company will charge the trust company for hours spent in the examination of corporate accounts and activities, including stock and bond transfer services and paying agency services. The charge will be at the rate of \$60 an hour and will be made for hours spent by each person in examining such accounts and activities at the site of the examination and hours spent in the Department offices writing the report of the examination of such activities.

Stat. Auth.: ORS 706.530

Stats. Implemented: ORS 705.620 & 706.530

Hist.: FID 2-1986, f. & ef. 3-7-86; FID 3-1986, f. & ef. 5-15-86; FID 4-1986, f. & ef. 7-25-86; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-002-0100; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1993, f. & cert. 2-23-93; FCS 4-1994, f. & cert. ef. 4-25-94

## **441-505-0030**

### **Charges for Special Examinations and Special Attention to Banking Institutions**

(1)(a) As authorized by ORS 706.500(3), 706.520 and 706.544, the Director will charge the banking institution the actual costs the Director incurs to conduct a special examination of the banking institution;

(b) As authorized by ORS 706.544 and 706.600, the Director will charge the banking institution the actual cost the Director incurs to take special action regarding the banking institution.

(2) Actual costs will include a charge for persons used to conduct the special examination or to take the action:

(a) The rate of charge for each person from the Department payable by a bank, a savings bank or stock savings bank is \$60 an hour:

(A) For each hour spent in conducting the examination at the site where the special examination is conducted under ORS 706.500(3) or 706.520 and each hour spent in the Department office writing the report of the examination and performing related administrative tasks;

(B) For each hour spent in taking action as authorized by ORS 706.600.

(b) The rate of charge for each person from the Department payable by a trust company is \$60 an hour for each hour spent in conducting the examination at the site where the special examination is conducted under ORS 706.544 and each hour spent in the Department office writing the report of the examination and performing related administrative tasks.

(3) Notwithstanding the rates of charge for person set by section (2) of this rule:

(a) If the services described by section (2) of this rule are performed by a consultant hired by contract for the particular

work, the charge is the actual cost to the Director of the contract consultant;

(b) If a person from the Department or the Director is required to travel out of state to provide the services described by section (2) of this rule, the rate of charge is \$60 an hour per person as provided by section (2) of this rule, plus actual travel from Salem, Oregon and subsistence expenses.

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 705.620, 705.630, 706.500, 706.520, 706.530, 706.544, 706.600 & 706.805

Hist.: FID 2-1986, f. & ef. 3-7-86; Renumbered from 805-002-0110; Suspended by FCS 3-1997(Temp), f. 10-6-97

## **441-505-0040**

### **Examiner Training Assessment**

(1) Pursuant to ORS 705.145, the Director hereby imposes a special limited assessment on all banks as defined pursuant to ORS 706.005(2). The assessment shall be due and payable on or before March 1 of each year through and including March 1, 1992.

(2)(a) The aggregate annual assessment of all banks shall not exceed \$35,000;

(b) The individual annual assessment of each bank shall be a percentage of that bank's total assets. The individual assessment may be adjusted annually by the director, but in no event shall the individual annual assessment be less than \$200 or more than \$2,000.

(3) All assessments shall be paid over to the Director who shall forward an equal amount to the Education Foundation of State Bank Supervisors Endowment Fund. All monies forwarded to said Fund may only be used for purposes of state bank examiner educational programs.

Stat. Auth.: ORS 705.145

Stats. Implemented: ORS 706.145 & 706.005

Hist.: FCS 3-1990, f. 5-18-90, cert. ef. 5-21-90

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 510**

**PROCEDURAL RULES**

**441-510-0000**

**Administrative Procedures Act Definitions Adopted**

The definitions of terms given in ORS Chapter 183 govern the meaning of terms used in OAR Chapter 441, Division 510 except where the context otherwise requires.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.005 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0005

**General**

**441-510-0010**

**Unacceptable Conduct**

The presiding officer at a public rulemaking hearing or a contested case hearing may exclude any participant, or counsel of a participant, who engages in disrespectful, disorderly or contemptuous language or conduct in connection with the hearing.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.600

Hist.: BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0007

**441-510-0020****Notice of Intended Rulemaking**

Prior to the adoption, amendment, or repeal of any rule, the Director will give notice of the proposed adoption, amendment, or repeal:

- (1) By causing notice of the proposed action to be published once, in the Secretary of State's Bulletin referred to in ORS 183.360, at least 15 days prior to the effective date of the adoption, amendment, or repeal of the rule;
- (2) By mailing a copy of the notice to persons on the Director's mailing list established pursuant to ORS 183.335(6);
- (3) By mailing or delivering copies to any persons upon request;
- (4) By mailing or delivering copies of the notice to the United Press International and to the Associated Press; and
- (5) By mailing copies of the notice to persons that may have an interest in the subject matter of the proposal and to organizations and publications that may provide notice to persons who may have an interest, such as the following, depending on the subject matter of the proposal:
  - (a) All state banks and all national, foreign and extranational banks doing business in this state and those authorized to make mortgage loans in this state;
  - (b) All mutual savings banks, trust companies, credit unions, consumer finance companies and pawnbrokers doing business in this state;
  - (c) Corporations authorized under Oregon law to act as trustee;
  - (d) Licensees operating under the Sale of Checks Act;
  - (e) Persons whose applications under the Bank Act and ORS Chapters 723, 725, and 726 are pending;
  - (f) The Oregon Bankers Association;
  - (g) The Oregon Credit Union League;
  - (h) The Oregon Consumer Finance Association.

Stat. Auth: ORS Ch. 183

Stats. Implemented: ORS 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-003-0011

**Rulemaking****441-510-0030****Notice of Intended Rulemaking; Contents When Giving Notice of Public Hearing**

- (1) When the Director gives notice of a public hearing on proposed rulemaking, as required by ORS 183.335 and OAR

441-510-0020, the notice will:

- (a) Describe the Director's proposed action (adoption, amendment, or repeal of rules, or any combination thereof) and, if practicable and appropriate, set forth verbatim any rule proposed to be adopted, amended or repealed;
- (b) State the subject matter and purpose of the proposed action in sufficient detail to inform a person that the person's interest may be affected;
- (c) State the time and place of the public hearing and the manner in which interested persons may present their views.

(2) There will be included with the notice:

- (a) The citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;
- (b) A statement of the need for the rule and how the rule is intended to meet the need;
- (c) A complete or abbreviated list of the principal documents, reports and studies, if any, prepared by or relied upon by the Director in considering the need for and in preparing the rule; a statement of the location at which those documents are available for public inspection; and, if an abbreviated list is provided, a statement of the location of a complete list;
- (d) A statement of fiscal impact that identifies state agencies, units of local government and the public that may be economically affected by the adoption, amendment or repeal of the rule, and an estimate of the economic impact on state agencies, units of local government and the public.

(3) In considering the economic effect of the proposed action on the public, the Director will use available information as provided by ORS 183.335, and reduce the economic impact on small businesses when and as required by ORS 183.540.

(4) If the proposed rule, or the rule proposed to be amended or repealed, is not set forth verbatim in the notice, the notice will state the time, place and manner in which a copy of the rule and any proposed amendment may be obtained.

Stat. Auth: ORS Ch 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800, 707.080, 707.150, 707.180 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0015

## **441-510-0040**

### **Notice of Intended Rulemaking; Contents When Public Hearing Will Be Held Only If Requested**

(1) When the Director plans to hold a public hearing on proposed rulemaking only if sufficient requests are received, the notice required by ORS 183.335 and OAR 441-510-0020 will:

- (a) Describe the proposed action (adoption, amendment, or repeal of rules, or any combination thereof) and summarize or, if practicable and appropriate, set forth verbatim any rule proposed to be adopted, amended or repealed;
- (b) State the subject matter and purpose of the proposed action in sufficient detail to inform a person that his interest may be affected;
- (c) State the time and place for submitting data or arguments in writing to the Director;
- (d) State that any interested person desiring an opportunity to express or submit his data, views or arguments at a public hearing must request in writing the opportunity to do so;

(e) State the name and address of the person to whom a written request for a public hearing must be submitted and the time within which the request must be received to be considered;

(f) State that a public hearing will be held if, within 15 days after publication of the notice in the Secretary of State's Bulletin referred to in ORS 183.360, the Director receives requests for a public hearing from ten or more persons or from an association having ten or more members.

(2) There will be included with the notice:

(a) The citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(b) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(c) A complete or abbreviated list of the principal documents, reports and studies, if any, prepared by or relied upon by the Director in considering the need for and in preparing the rule; a statement of the location at which those documents are available for public inspection; and, if an abbreviated list is provided, a statement of the location of a complete list;

(d) A statement of fiscal impact identifying state agencies, units of local government and the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on state agencies, units of local government and the public.

(3) In considering the economic effect of the proposed action on the public, the Director will use available information as provided by ORS 183.335, and reduce the economic impact on small businesses when and as required by ORS 183.540.

(4) If the proposed rule, amendment or repeal is not set forth verbatim in the notice, the notice will state the time, place and manner in which a copy of the rule or amendment may be obtained.

(5) If sufficient requests for a public hearing are received within the time allowed, the Director will set the time and place for a hearing and cause notice thereof to be given in accordance with OAR 441-510-0020 and 441-510-0030.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0020

## **441-510-0050**

### **Postponements of Intended Action**

(1) An interested person may request postponement of any intended action to allow the requesting person an opportunity to submit data, views, or arguments concerning the proposed action. The Director will postpone the date of the intended action if such a request is received within 15 days after the publication of notice of the intended action in the Secretary of State's Bulletin referred to in ORS 183.360.

(2) The length of such postponement will be not less than ten or more than 90 days. In determining the length of the postponement, the Director will consider the time necessary to give reasonable notice of the postponement and the complexity of the subject and issues involved in the intended action.

(3) The Director will give notice of the postponement pursuant to OAR 441-510-0020. However, publication of the notice in the Secretary of State's Bulletin will be made only when the request is received at least 15 days before the next

publication date of the Bulletin and the next publication date precedes the date to which the intended action is postponed.

(4) This section does not apply when the Director is adopting a temporary rule pursuant to ORS 183.335(5) and OAR 441-510-0100.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-003-0030

## **441-510-0060**

### **Conduct of Hearing**

- (1) A public hearing on proposed rulemaking will be conducted by and under the control of the presiding officer. The presiding officer may be the Director or another person designated by the Director.
- (2) At the commencement of the hearing any person wishing to be heard shall advise the presiding officer of his name, address and affiliation. Additional persons may be heard at the discretion of the presiding officer. The presiding officer will provide an appropriate form for listing witnesses. The form will provide space for the name of the witness, whether the witness favors or opposes the proposed rules and such other information as the presiding office considers appropriate.
- (3) At the opening of the hearing, the presiding officer will summarize the contents of the notice of the hearing; or, if requested by a person who is present, the notice will be read in full.
- (4) Subject to the discretion of the presiding officer, the order of the presentation will be:
  - (a) Statement of proponents;
  - (b) Statement of opponents;
  - (c) Statements of any other witness present and wishing to be heard.
- (5) The presiding officer and, with his approval, any member of the Department have the right to question or examine any witness making a statement at the hearing. The presiding officer may, in his discretion, permit other persons to examine witnesses.
- (6) Rebuttal and additional statements by any witness will not be allowed unless requested by the presiding officer. However, when rebuttal or additional statements are given, the presiding officer will allow an equal opportunity for reply.
- (7) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses present and desiring to make a statement have had an opportunity to do so.
- (8) The presiding officer will, if practicable, receive all physical and documentary evidence presented by witnesses. He will cause exhibits to be marked and to show the identity of the witness offering the exhibit. The exhibits will be preserved by the Department for one year or, in the discretion of the Director, any exhibit may be returned to the witness offering the exhibit.
- (9) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(10) A verbatim oral, written or mechanical record will be made of all the proceeding or, in the alternative, a record in the form of minutes.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0035

## **441-510-0070**

### **Presiding Officer's Report**

Upon request by the Director, the presiding officer shall, within a reasonable time after the hearing, provide the Administrator with a written summary of statements given and exhibits received and a report of his observations of physical experiments, demonstrations or exhibits. The presiding officer may make recommendations, but the recommendations are not binding upon the Director.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0040

## **441-510-0080**

### **Director's Action; Certification or Notice to Secretary of State; Effective Date**

(1) At the conclusion of a rulemaking hearing, or after receipt of the presiding officer's report if one is requested, the Director may adopt, amend or repeal rules covered by the notice of intended action. The Director will fully consider all written and oral submissions.

(2) The Director will file in the office of the Secretary of State:

(a) A certified copy of each rule adopted or amended; and

(b) A notice of any repeal of a rule.

(3) Within ten days after the certified copy and notice is filed in the office of the Secretary of State, the Director will submit copies to Legislative Counsel as required by ORS 103.715.

(4) The rule, amendment or repeal is effective on the date the certified copy or notice is filed with the Secretary of State unless a later date is required by statute or is specified in the rule.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0045

## **441-510-0090**

## **Petition to Adopt, Amend, or Repeal Rule; Content; Filing**

- (1) An interested person may petition the Director requesting the adoption, amendment, or repeal of a rule. A petition shall be in writing, signed by or on behalf of the petitioner, and shall in detail state:
- (a) The rule petitioner requests the Director to adopt, amend, or repeal; or, when amendment of an existing rule is sought, the rule shall be set forth in the petition in full, with matter proposed to be deleted enclosed in brackets and proposed additions underlined or shown in boldface print;
  - (b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule;
  - (c) All propositions of law to be asserted by petitioner;
  - (d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule;
  - (e) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed.
- (2) If the petitioner wishes to present his views orally, he should in the petition request the opportunity to do so.
- (3) A petition will be considered filed when received in typewritten or printed form by the Director.
- (4) When a petition is filed, the Director may mail a true copy of the petition together with a copy of OAR 441-510-0020 to 441-510-0100 to all parties named in the petition. The Director also will notify petitioner that petitioner may, by a date specified in the notice, submit written data and views. If the Director, when requested, decides to hear petitioner orally, he will fix a date for the oral presentation and notify the petitioner.
- (5) After the oral presentation, if any, and within 30 days after the date the petition is filed, the Director will either deny the petition or initiate rulemaking proceedings in accordance with OAR 441-510-0020 to 441-510-0100.
- (6) If the Director denies a petition to adopt, amend, or repeal a rule, the Director will issue an order setting forth in detail the reasons for the denial. The order will be mailed to the petitioner.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0050

## **441-510-0100**

### **Temporary Rules**

- (1) Notwithstanding OAR 441-510-0020, 441-510-0030 and 441-510-0040, when circumstances described by ORS 183.335 (5)(a) exist, the Director may, as authorized by ORS 183.335(5) and (6), proceed to adopt, amend, repeal or suspend a rule without prior notice or hearing, or upon any abbreviated notice and hearing that he finds practicable. In such case, the Director will take appropriate measures to make the temporary rule known to persons who may be affected by the rule.
- (2) Within ten days after the adoption of a temporary rule, the Director will submit a copy of the adopted rule to Legislative Counsel.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0055

## **441-510-0110**

### **Notice of Periodic Review of Rules**

- (1) Before conducting a periodic review of rules as required by ORS 183.545, the Director will give notice to the public pursuant to OAR 441-510-0020.
- (2) The notice will identify the rules under review by rule number and subject matter and will state that the Director invites written comments concerning:
  - (a) The continuing need for the rule;
  - (b) The complexity of the rule;
  - (c) The extent to which the rule overlaps, duplicates or conflicts with other state rules, federal regulations and local government regulations;
  - (d) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
  - (e) The legal basis for the rule.
- (3) The notice will state the date by which written comments must be received by the Director and the address to which comments should be sent.
- (4) If the Director provides a public hearing to receive oral comments on the rules, the notice will include the time and place of the hearing.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0057

## **Declaratory Rulings**

## **441-510-0120**

### **Institution of Proceedings for Declaratory Ruling; "Parties" Defined**

- (1) On petition of any interested person, the Director may, in his discretion, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by the Director.
- (2) As used in OAR 441-510-0120 to 441-510-0190 unless the context requires otherwise, "parties" means the petitioner and all other persons known to the petitioner to be interested in the subject of the petition and named in the petition.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0060

## **441-510-0130**

### **Contents of Petition**

(1) The petition to institute proceedings for a declaratory ruling shall contain:

(a) The rule or statute for which petitioner seeks a declaratory ruling;

(b) A detailed statement of the facts upon which petitioner requests the Director to issue a declaratory ruling;

(c) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling;

(d) All propositions of law or contentions to be asserted by petitioner;

(e) The questions presented for decision by the Director;

(f) The specific relief requested; and

(g) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

(2) The petition shall be typewritten or printed and should be substantially in the form prescribed by the Attorney General and set forth in the Appendix of the Model Rules of Procedure under the Administrative Procedure Act promulgated by the Attorney General.

[ED NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Division of Finance and Corporate Securities.]

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0065

## **441-510-0140**

### **Filing and Service of Petition**

(1) The petition will be considered filed when received by the Director.

(2) The Administrator will, within 60 days after the petition is filed, notify the petitioner whether a ruling will be issued. If the Director decides to issue a ruling, he will fix the time and place for a hearing at which the petition will be considered and cause all parties named in the petition to be served by mail with:

(a) A copy of the petition;

(b) A copy of OAR 441-510-0120 to 441-510-0190; and

(c) A notice of a hearing on the petition.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0070

## **441-510-0150**

### **Contents of Notice of Hearing**

The notice of hearing for a declaratory ruling will set forth:

- (1) The time and place of the hearing.
- (2) The designation of the officer or member of the Department, or other person who will preside at and conduct the hearing.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0075

## **441-510-0160**

### **Conduct of Hearing; Briefs and Oral Argument**

- (1) The hearing shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the Director or another person designated by the Director.
- (2) At the hearing, all parties have the right to present oral arguments. The presiding officer may impose reasonable limits on the time allowed for oral argument. Parties and Department staff may file, with the Director or the presiding officer, briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs.
- (3) The presiding officer may, in the discretion of the presiding officer, receive testimony or other evidence with regard to a fact or facts in issue in the proceeding. Any testimony shall be taken upon oath or affirmation of the witness, and witnesses are subject to cross examination by the parties and the Director, or the authorized representative of the Director. The Director may enter into stipulations with the petitioner with regard to facts being adjudicated by the Director.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0080

## **441-510-0170**

### **Presiding Officer's Opinion**

- (1) In those instances where the hearing is conducted before someone other than the Director, the presiding office shall prepare an opinion in form and in content as set forth in OAR 441-510-0180.

(2) The Director is not bound by the opinion of the presiding officer.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0085

#### **441-510-0180**

##### **Decision of Director; Time, Form, and Service**

(1) The Director will issue his declaratory ruling within 60 days after the close of the hearing or, when briefs are permitted to be filed subsequent to the hearing, within 60 days after the time permitted for the filing of briefs.

(2) The ruling will be in the form of a written opinion and will set forth:

(a) The facts being adjudicated by the Director;

(b) The statute or rule being applied to those facts;

(c) The Director's conclusion as to the applicability of the statute or rule to those facts;

(d) The Director's conclusion as to the legal effect or result of applying the statute or rule to those facts;

(e) The reasons relied upon by the Director to support his conclusions.

Stat. Auth: ORS Ch.183 & 06

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0090

#### **441-510-0190**

##### **Reconsideration of Ruling; Effect of Ruling; Judicial Review**

(1) The Director may, on request of a petitioner, review and alter a ruling that is adverse to the petitioner.

(2) Except as provided by section (1) of this rule, a declaratory ruling issued in accordance with ORS 183.410 and OAR 441-510-0120 to 441-510-0190 is binding between the Director and the petitioner on the state of facts alleged, or found to exist, unless it is altered or set aside by a court.

(3) Binding rulings are subject to review in the Court of Appeals in the manner provided by ORS 183.480 for review of orders in contested cases.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f & ef. 3-5-76; Renumbered from 805-003-0095

## Contested Cases

### 441-510-0200

#### Contested Case Proceedings; When Conducted

- (1) A proceedings in a contested case will be conducted in accordance with OAR 441-510-0200 to 441-510-0330.
- (2) Section (1) of this rule does not apply when a person has a right to appeal the decision of the Director to any court of appropriate jurisdiction as provided by ORS 707.080, 707.150, 707.180 and similar statutes.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0310

### 441-510-0210

#### Notice of Opportunity for Hearing; Notice of Hearing; Service

- (1) When the Director is required to give, or gives, a person an opportunity for a hearing to contest any action by the Department, the Director will notify the person of its right to or opportunity for a hearing. Except as provided by section (2) of this rule, such a notice will state that if the person wishes a hearing, the Director must be notified within 20 days after the date the notice is mailed.
- (2) When the Director gives notice that a license has been refused or suspended, the notice will state also that if the person wishes a hearing to contest the action, the Director must be notified within the time allowed by ORS 183.435 in the case of a refusal, or the time allowed by ORS 183.430(2) in the case of a suspension or refusal because of a danger to the public health or safety.
- (3) The Director will give notice of a contested case hearing to all parties. The notice will be served as authorized by ORS 183.415(1), and will include:
  - (a) The information required by ORS 183.415(2) to be included;
  - (b) A statement that each party is entitled to be represented at the hearing by counsel of his choosing; and
  - (c) A statement that if a hearing is requested, each party will be given information required to be given by ORS 183.413(2), on procedure, right of representation and other rights of parties as the rights relate to the hearing; and the information will be given in accordance with and subject to the provisions of ORS 183.415.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 1-1981, f. 4-8-81, ef. 4-9-81; Renumbered from 805-003-0315

### 441-510-0220

#### Request to Participate as Party or in Limited Party Status in Contested Case Proceeding

- (1) When the Director gives notice of a contested case hearing, interested persons may, in accordance with this section, petition to become parties or limited parties to the proceeding. The Director will, when so petitioned, designate as a party or limited party a person who has an interest in the result of the proceedings or who represents a public interest in such result.
- (2) A person who wishes to participate as a party or in a limited party status shall file a petition, with sufficient copies for service on the parties, with the Director at least ten days prior to the date set for the contested case hearing.
- (3) A petition to participate as a party or in a limited party status shall contain:
  - (a) The name and address of the petitioner, the organization, if any, which the petitioner represents, and the name and address of the petitioner's attorney, if any; and
  - (b) A detailed statement of the petitioner's interest, economic or otherwise, and of how such interest may be affected by the results of the proceedings, if the petitioner is seeking party or limited party status to protect an alleged personal interest in the outcome of the proceeding; or
  - (c) A detailed statement of the public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest, if the petitioner purports to be representing a public interest in the results of the proceedings; and
  - (d) A statement of the reasons why existing parties to the proceeding cannot represent adequately the interest identified in subsection (3)(b) or (c) of this rule.
  - (e) If the petition is for limited party status, the precise area or areas in which participation is requested.
- (4) The Director will serve copies of a petition for party or limited party status on all parties in person or by mail. Parties shall have seven days after the date of personal service or of mailing of the notice by the Director to file an answer to the petition.
- (5) If a petition to become a party or limited party is not filed within the time allowed by section (2) of this rule, it will not be considered unless the Director determines that good cause exists for failure to file within the time allowed. If the Director determines that good cause exists, the petition will be considered timely filed and the Director in his discretion may either:
  - (a) Shorten the time within which answers to the petition shall be filed; or
  - (b) Postpone the hearing until disposition is made of the petition.
- (6) If a petition to participate as a party or in a limited party status is granted, the Director may postpone or continue the hearing to a later date when it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties.
- (7) In ruling on a petition for party or limited party status, the Director will consider:
  - (a) Whether the petitioner has demonstrated a personal or a public interest which reasonably could be affected by the outcome of the proceeding;
  - (b) Whether any such affected interest is within the scope of the Director's jurisdiction;
  - (c) The qualifications of the petitioner to represent the public interest in a case where a public interest is alleged;
  - (d) The extent to which the petitioner's alleged interest will be represented by existing parties.
- (8) The Director's action on a petition for party or limited party status will be by written order and served promptly on

the petitioner and all parties. An order granting limited party status will set forth the area or areas of participation granted.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 1-1978, f. 3-16-78, ef. 4-1-78; BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0317

#### **441-510-0230**

##### **Immediate Suspension or Refusal to Renew a License; Notice of Opportunity for Hearing; Service**

(1) If the Director finds there is a serious danger to the public health or safety, he may suspend or refuse to renew a license effective immediately without opportunity for a prior hearing.

(2) The Director will give notice to the party immediately upon such a suspension or refusal to renew a license. The notice will include:

(a) A statement of the party's right to hearing;

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) Reference to the particular statutes and rules involved;

(d) A short, plain statement of the matters asserted or charged;

(e) A statement that the party may be represented by counsel at the hearing;

(f) A statement that, if the party demands a hearing, the Director must be notified within 90 days after the date of the notice;

(g) A statement of the reason or reasons for the immediate action;

(h) The effective date of the commencement of the suspension or refusal to renew the license.

(3) The notice will be served personally or by registered or certified mail.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0320

#### **441-510-0240**

##### **Order When No Hearing Requested or Party Fails to Appear**

(1) When a party has been given an opportunity and fails to request a hearing within a specified time or, having requested a hearing, fails to appear at the specified time and place, the Director will, subject to section (2) of this rule, enter an order which supports the Director's action.

(2) An order adverse to a party will be issued under section (1) of this rule only if the Department record in the

proceeding demonstrates a prima facie case justifying the order.

(3) When an order states it is effective if a request for a hearing is not made by a party, the record in the proceeding may be made when the order is issued. If such an order is based only on an application or other material submitted by a party, the Director may so certify in the order, and that material will constitute the evidentiary record if a hearing is not requested.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0325

## **441-510-0250**

### **Subpoenas; Depositions**

(1) Subject to section (2) of this rule, the Director will, upon request of a party to a contested case, issue subpoenas to compel the attendance of witnesses in a hearing on a contested case. Subpoenas may also be issued by the attorney of record of a party as authorized by ORS 183.440.

(2) Before issuing subpoenas to the requesting party, the Director may require a showing of general relevancy and that the evidence to be given by the witness is within the reasonable scope of the proceedings.

(3) On petition of a party to a contested case, the Director may order the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions (ORS Chapter 45). Depositions may also be taken by the use of audio or audio-visual recordings. The petition shall include:

(a) The name and address of the witness whose testimony is desired;

(b) A showing of materiality of the testimony;

(c) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.

(4) If the Director issues an order for the taking of a deposition and the witness resides in this state and is unwilling to appear, the Director may issue a subpoena as provided by section (1) of this rule requiring the witness to appear before the officer taking the deposition.

(5) A witness appearing pursuant to subpoena, other than a party, or an officer or employee of the Department, shall receive fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena is responsible for service of the subpoena and tendering the fees and mileage to the witness.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 2-1982, f. 3-31-82, ef. 4-1-82; BB 3-1982, f. & ef. 8-20-82; Renumbered from 805-003-0330

## **441-510-0260**

### **Hearing in Contested Case**

- (1) A contested case hearing will be conducted by and will be under the control of the presiding officer. The presiding officer will be the Director or a person designated by the Director.
- (2) At the discretion of the presiding officer, the hearing will be conducted in the following manner:
  - (a) Statement and evidence of the Division in support of its action;
  - (b) Statement and evidence of parties, including persons with limited party status, disputing the Division's action;
  - (c) Rebuttal testimony.
- (3) The presiding officer, parties and the Division, or their attorneys, have the right to question, or examine and cross-examine witnesses. Persons with limited party status may examine and cross-examine only those witnesses which relate to the area or areas of participation granted by the Director.
- (4) The burden of presenting evidence to support a fact or position rests on the proponent of the fact or position.
- (5) The hearing may be continued with recesses as determined by the presiding officer.
- (6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.
- (7) Exhibits will be marked and the markings will identify the persons offering the exhibits. The exhibits will be preserved by the Director as part of the record of the proceedings.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 1-1985(Temp), f. & ef. 4-24-85; Renumbered from 805-003-0335

## **441-510-0270**

### **Evidentiary Rules**

- (1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs is admissible.
- (2) Irrelevant, immaterial or unduly repetitious evidence is inadmissible and will be excluded.
- (3) All offered evidence, not objected to, will be received by the presiding officer subject to his power to exclude irrelevant, immaterial or unduly repetitious matter.
- (4) Evidence objected to may be received by the presiding officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.
- (5) Any time ten days or more before a hearing, a party may serve on an opposing party a copy of any affidavit, certificate, or other document the party proposes to introduce in evidence. Unless the opposing party requests cross-examination of the affiant, certificate preparer, or other document preparer or custodian, within five days prior to the hearing, the affidavit or certificate may be offered and received with the same effect as oral testimony or the document may be received in evidence.
- (6) If the opposing party requests cross-examination of the affiant, certificate preparer, or other document preparer or custodian as provided in section (5) of this rule and the opposing party is informed within five days prior to the hearing

that the person will not appear for cross-examination but the affidavit, certificate or other document will be offered in evidence, the affidavit, certificate or other document may be received in evidence, provided the hearing officer determines that:

- (a) The contents of the affidavit, certificate or other document is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and
- (b) The party requesting cross-examination would not be duly prejudiced or injured by lack of cross-examination.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-003-0340

### **441-510-0280**

#### **Proposed Order in Contested Case; Filing of Exceptions and Arguments**

- (1) If the Director is not present at the hearing or has not reviewed and considered the record, and the order is adverse to a party (excluding the Division), a proposed order including findings of fact and conclusions of law will be served upon the parties.
- (2) When the Director serves a proposed order on the parties, the Director will at the same time or at a later date notify the parties:
  - (a) When written exceptions must be filed to be considered by the Director; and
  - (b) When oral argument may be made to the Director.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-003-0345

### **441-510-0290**

#### **Ex Parte Communications to the Director**

- (1) The Director will place on the record statements of the substance of each written or oral ex parte communication he receives on a fact in issue made to the Director during his review of a contested case.
- (2) The Director will give notice to all parties of ex parte communications. The notice will include:
  - (a) The substance of the communication if oral; if in writing, a copy of the communication; and
  - (b) Whether or not the Director will consider the ex parte communication in deciding the case.
- (3) If the Director gives notice the communication will be considered in deciding the case, the Director at his discretion will:
  - (a) Set a date when the other parties may in writing rebut the substance of the ex parte communication; or

- (b) Schedule a hearing for the limited purpose of receiving evidence relating to the ex parte communication.
- (4) If the Director schedules a hearing, he may remand the matter to a hearing officer to conduct the hearing.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0346

## **441-510-0300**

### **Ex Parte Communications to a Presiding Officer**

- (1) The presiding officer at a contested case hearing shall place on the record statements of the substance of each written or oral ex parte communication on a fact in issue made to such officer during the pendency of the proceedings.
- (2) The presiding officer shall give notice to all parties of ex parte communications. The notice shall include:
  - (a) The substance of the communication if oral; if in writing, a copy of the communication; and
  - (b) Whether or not the officer will consider the ex parte communication in making a recommendation to the Director or in deciding the case.
- (3) If the presiding officer gives notice that the ex parte communication will be considered in making a recommendation to the Director or in deciding the case, the officer shall either:
  - (a) Set a date when the other parties may in writing rebut the substance of the ex parte communication; or
  - (b) Schedule a hearing for the limited purpose or receiving evidence relating to the ex parte communication.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0347

## **441-510-0310**

### **Ex Parte Communication Record**

If an ex parte communication is made to the Director or a presiding officer as described in OAR 441-510-0290 or 441-510-0300, the record will include:

- (1) The ex parte communication if it is in writing;
- (2) A statement by the Director or the presiding officer, whoever received the communication, of the substance of the communication if oral;
- (3) The Director's or presiding officer's notice to the parties of the ex parte communication;
- (4) Rebuttal documents; and

(5) If a hearing is held, the evidence, exhibits and transcripts of the proceedings.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 1-1980, f. 3-28-80, ef. 4-1-80; Renumbered from 805-003-0348

#### **441-510-0320**

##### **Final Order in Contested Case; Notification**

(1) Final orders in contested cases will be in writing and include:

(a) Rulings on admissibility of offered evidence;

(b) Findings of fact: Those matters which are either agreed as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be a fact over contentions to the contrary, and findings must be made on each fact necessary to reach the conclusion of law on which the order is based;

(c) Conclusions of law: Application of the controlling law to the facts found and the legal results arising therefrom;

(d) Order: The action taken by the Director as a result of the findings of fact and conclusions of law.

(2) The final order may include an opinion explaining the reasons and rationale adopted by the Director in arriving at the conclusions supporting the Director's action. The final order will include a citation of the statutes under which the order may be appealed.

(3) Parties to contested cases or their attorneys, if any, of record will be served a copy of the final order. A copy of the proposed order will not be served on the parties as an attachment to a final order when the final order of the Director adopts the proposed order without change. However, a copy of the proposed order that is adopted by the final order will be furnished to any party on request.

Stat. Auth: ORS Ch. 183 & 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1980, f. 3-28-80, ef. 4-1-80; BB 2-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-003-0350

#### **441-510-0330**

##### **Reconsideration; Rehearing**

(1) A party may file a petition for reconsideration or rehearing on a final order with the Director within 60 days after the order is served.

(2) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.

(3) The Director may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted an amended order will be entered.

(4) The Director may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be

limited by the Director to specific matters. If a rehearing is held an amended order will be entered.

(5) If the Director does not act on the petition within 60 days after the date the petition was filed, the petition will be considered denied.

Stat. Auth: ORS Ch. 706

Stats. Implemented: ORS 706.790, 706.795, 706.800 & 714.135

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-003-0355

#### **441-510-0340**

##### **Charges for Special Examinations and Special Attention to Banking Institutions**

[Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97]

#### **441-510-0341**

##### **Report of Oregon Deposits**

[Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97]

#### **441-510-0342**

##### **Call Reports**

[Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97]

#### **441-510-0343**

##### **Additional Reports**

[Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97]

#### **441-510-0344**

##### **Report of Trust Assets**

[Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97]

#### **441-510-0345**

##### **Insurance Activities**

[Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97]

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## Oregon Administrative Rules 1998 Compilation

### DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE AND CORPORATE SECURITIES

#### DIVISION 520

#### ORGANIZATION OF INSTITUTIONS

#### 441-520-0000

#### Guaranty or Expenses Fund; Liquidation

Money constituting a guaranty or expense fund established pursuant to ORS 707.200 shall be used, upon the commencement of business by an institution, to liquidate outstanding organizational expenses. The balance of such fund shall be used to pay general operating expenses of the institution, as incurred, until gross operating revenues are sufficient to pay the general operating expenses of the institution.

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 707.200

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-011-0010; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 530**

**GENERAL POWERS OF INSTITUTIONS**

**Dividends**

**441-530-0000**

**Dividends, Stock and Cash; Record of Directors' Decision; Request for Approval and Report Forms**

(1) A request under ORS 707.350 for approval of a stock dividend declared by an institution shall be made to the Director on Form B-57-A which will be furnished by the Division. To comply with ORS 707.410, a copy of the request shall be entered in or made a part of the minutes of the board meeting at which the directors declare the dividend.

(2) An institution shall not pay a cash dividend until at least ten days after a report that the dividend has been declared is received by the Director. The Director may exercise his right under ORS 707.400 to suspend payment of a dividend prior to or after the expiration of the ten-day period. An institution shall make the report of a cash dividend declared to the Director on Form B-57 which will be furnished by the Division.

[ED NOTE: The form(s) referred to or incorporated by reference in this rule are available from the office of the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 706.670, 707.350 & 707.380 - 707.420

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-012-0055

**441-530-0050**

**Housing Agency Low Income Rental Housing Fund Client Trust Accounts**

(1) Every financial institution as defined in ORS 706.005, authorized by law to offer client trust accounts established

pursuant to ORS 696.241 and to accept deposits to such accounts in Oregon may:

- (a) Make available to its depositors, client trust accounts, hereafter designated as Housing Agency Low Income Rental Housing Fund Accounts ("Housing Fund Accounts"); and
  - (b) Pay interest on all funds deposited in each Housing Fund Account at the same rate payable on similar accounts.
- (2) Each Housing Fund Account shall be created and maintained according to written agreement between the financial institution and participating depositor. Each agreement shall authorize the financial institution to pay all interest earned, net of fees and expenses imposed by the financial institution, to the Housing Agency Low Income Rental Housing Fund designated in Chapter 916, Oregon Laws 1989.
- (3) Fees and Expenses:
- (a) Each Housing Fund Account may be subject to fees and expenses which are reasonable and are customarily assessed or comparable to those assessed by the financial institution for similar accounts;
  - (b) In no event shall a financial institution collect fees and expenses from a Housing Fund Account in excess of earned interest.
- (4) Interest Remittances:
- (a) Each participating financial institution shall remit to the Housing Agency any interest earned on each Housing Fund Account, net of reasonable fees and expenses. Remittance, if any, shall be made at least quarterly;
  - (b) Remittance may be made in a single aggregate installment representing net interest payable from all Housing Fund Accounts maintained by the financial institution.
- (5) If a financial institution is required to produce tax information returns (Form 1099), the financial institution shall designate the State of Oregon Housing Agency Low Income Rental Housing Fund, as payee or recipient. Tax identification information shall be provided by the Housing Agency to participating financial institutions upon request.

Stat. Auth.: ORS 458.415, 696.254 & 706.790

Stats. Implemented: ORS 706.005 & 706.790

Hist.: FCS 8-1989, f. 12-14-89, cert. ef. 1-1-90; FCS 3-1992, f. & cert. ef. 8-11-92; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

## **Authorizing Banking Institutions to Contract for Provision of Securities Services**

### **441-530-0060**

#### **Scope, Purpose and Effective Date**

(1) **Scope and Purpose of Rule.** This rule authorizes banking institutions to contract with registered securities broker-dealers for the provision of certain securities services at locations within the main and branch offices of the contracting bank. The rule imposes certain limitations and requirements upon banking institutions which enter into such contracts. This rule does not grant new authority to banking institutions. Rather, it clarifies the authority of banking institutions under existing statutes to enter into contracts for the provision of securities services; and is adopted pursuant to the authority of the Director to adopt rules for the purpose of carrying out the Bank Act, under ORS 706.790.

(2) **Effective Date.** This rule is effective August 19, 1991.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0070**

### **Definitions**

As used in this rule:

(1) "Banking Institution" has the meaning given that term in ORS 706.005.

(2) "Registered Securities Broker-Dealer" or "Securities Broker-Dealer" means a person who is registered with the Securities and Exchange Commission, the National Association of Securities Dealers, and the Securities Section, Division of Finance and Corporate Securities as a securities broker-dealer.

(3) "Securities Services" means the purchases and sale of various securities and related products, including without limitation equity securities, debt securities, securities options, municipal securities, limited partnerships, mutual funds shares and interests in unit investment trusts; and the provision of investment advice. Provided, however, that "securities services" does not include the handling of commodities futures or commodities options transactions, fiduciary accounts for the banking institution or discretionary accounts; or the purchase of securities for the account of the securities broker-dealer; or the underwriting of securities.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.005, 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0080**

### **Contracts for Provision of Securities Services**

(1) **Authority to Contract.** Banking institutions may contract with one or more registered securities broker-dealers for the provision of securities services subject to the provisions of this rule.

(2) **Elements of Bank-Broker Contract:**

(a) Any such contract shall be in writing and executed by authorized representatives of the banking institution and the securities broker-dealer;

(b) The contract may authorize the securities broker-dealer to establish offices, desks or other sites for the provision of securities services in one or more offices of the banking institution, provided that each such site:

(A) Is located in an area of the banking institution that is readily distinguishable from the areas in which the banking business of the institution is conducted;

(B) Is clearly identified as being occupied or utilized by the securities broker-dealer for the provision of securities services and not for the provision of banking services; and

(C) Is staff solely by one or more persons who have been licensed and appointed as registered representatives of the securities broker-dealer, to function as dual employees of the banking institution and the securities broker-dealer, and who will operate in accordance with the provisions of OAR 441-530-0060 to 441-530-0180.

(c) Any such contract may provide for the securities broker-dealer to remit to the banking institution or any affiliate thereof an agreed portion of commissions earned from securities transactions entered into by the securities broker-dealer at the locations of the banking institution;

(d) Any such contract may contain any other terms and provisions which are agreed upon by the securities broker-dealer and the banking institution and which are not inconsistent with this rule.

(3) Additional Requirements:

(a) Each banking institution that enters into a contract with one or more securities broker-dealers under section (2) of this rule shall take all necessary steps to ensure that the books and records of the banking institution are kept separate and distinct from all books and records of the securities broker-dealer or broker-dealers;

(b) Each banking institution that enters into a contract under section (2) of this rule with a securities broker shall:

(A) Designate an officer of the banking institution to review each new recommended securities list that is generated by the securities broker-dealer, to determine whether there is any security so listed which is issued by a company with which the banking institution has established a business relationship. In any such case, if the bank has or may acquire material inside information regarding the company, the banking institution will arrange with the securities broker-dealer to have such company deleted from the list of recommended securities; and

(B) Make arrangements to ensure that a designated officer of the banking institution will promptly notify the securities broker-dealer if the banking institution establishes a business relationship with a company subsequent to a security being placed on the recommended securities list by the securities broker-dealer.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0090**

### **Dual Employees Under Bank-Broker Contracts**

The following shall apply to each person who is appointed by a securities broker-dealer as a registered representative pursuant to a contract which is subject to OAR 441-530-0060 to 441-530-0180:

(1) Employment Agreement. Each such registered representative shall join with the securities broker-dealer, the banking institution or both in executing an employment agreement.

(2) Control Over Registered Representatives. The employment agreement shall provide that the securities broker-dealer shall have exclusive control over the registered representative's securities activities, and such person shall engage in such activities in conformity with all procedures and directives which may be issued by the securities broker-dealer, and all applicable regulatory requirements.

(3) Supervision of Registered Representatives by Banking Institution. The banking institution shall defer to the securities broker-dealer in regard to controlling and supervising the securities related activities of the registered representative, but shall have exclusive control over banking activities performed or engaged in by the registered

representative.

(4) The registered representative may be compensated by the banking institution for all securities and other activities engaged in by the registered representative, and the contract may provide for the banking institution to be reimbursed by the broker-dealer for all or part of the registered representative's compensation.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0100**

### **Employees Other Than Dual Employees**

Employees of the banking institution who are not dual employees subject to OAR 441-530-0060 to 441-530-0180 may distribute on request informational literature regarding the securities services offered by the securities broker-dealer, and may inform customers and other persons that the securities services are available on the premises of the banking institution. However, such employees may not proffer or otherwise disseminate investment recommendations to customers or other persons, or otherwise engage in any activities which are intended to promote the utilization of securities services by customers of the banking institution. Nor shall any such employee recommend or require that any customer of the banking institution establish an account relating to securities services offer by the securities broker-dealer.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0110**

### **Disclosure Requirements**

(1) Advertisements and Promotional Materials are the Responsibility of the Broker-Dealer. All advertising and promotional material which is disseminated by the banking institution or the securities broker-dealer, any registered representative or other employee or agent of the banking institution or securities broker-dealer, and which relates to the provision of securities services, shall clearly state that the securities services are being provided by the securities broker-dealer and not by the banking institution, and that any securities purchased from or through the securities broker-dealer have not been underwritten by the banking institution and are not insured or guaranteed by the banking institution, the Federal Deposit Insurance Corporation or any other government agency.

(2) Disclosure to Customer; Acknowledgement of Disclosure is the Responsibility of the Banking Institution:

(a) Requirement for Disclosure and Acknowledgement. Prior to or concurrent with providing any securities services to any customer at or through any office of the banking institution, the customer shall be provided with a written disclosure statement meeting the requirements of this subsection, and shall sign a statement acknowledging receipt of the disclosure statement;

(b) Required Contents of the Disclosure Statement. The disclosure statement shall at a minimum contain provision to the effect that:

- (A) The securities services are being provided by the securities broker-dealer and not by the banking institution;
- (B) Any securities purchased from or through the securities broker-dealer have not been underwritten by the banking institution and are not insured or guaranteed by the banking institution, the Federal Deposit Insurance Corporation or any other government agency;
- (C) Securities purchased may fluctuate in value;
- (D) There is no assurance or guarantee that there will be a market for the resale of any securities purchased;
- (E) The yield (if any) from securities purchased may fluctuate, and the past performance of any security should not be regarded as an indication of future performance;
- (F) Any investment advice is offered solely by the securities broker-dealer through its registered representative, and does not constitute the advice of the banking institution.
- (c) Additional Contents of Disclosure Statements. The disclosure statement may contain any other information which is not inconsistent with the information required to be disclosed under this rule;
- (d) Acknowledgement of Disclosure. The acknowledgement statement to be signed by the customer shall state in substance that the customer has read and received a copy of the disclosure statement;
- (e) Periodic Account Statements. Each monthly or other periodic account statement which is mailed or otherwise provided to the securities customer shall contain a statement to the effect that the securities services are being furnished to the customer by the securities broker-dealer and not by the banking institution.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **Authorizing Banking Institutions to Sell Mutual Funds and Interests in Unit Investment Trusts**

### **441-530-0150**

#### **Scope, Purpose and Effective Date**

- (1) Scope and Purpose of Rule. This rule authorizes banking institutions to sell mutual funds and interests in unit investment trusts. The rule imposes certain limitations and requirements upon banking institutions which engage in such activities. This rule is adopted pursuant to ORS 706.795, which authorizes the director to adopt rules authorizing a banking institution to exercise any of the powers conferred on a federally chartered bank if such adoption will serve the public convenience and advantage and equalize and maintain the quality of competition between state chartered banking institutions and federally chartered banking institutions.
- (2) Effective Date. This rule is effective August 19, 1991.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0160**

### **Definitions**

As used in this rule, "banking institution" has the meaning given that term in ORS 706.005.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0170**

### **Sale of Mutual Funds and Interests in Unit Investment Trusts**

Banking institutions may engage in the sale of mutual funds and interests in unit investment trusts subject to the provisions of this rule and applicable securities laws:

- (1) **Initiation of Transactions.** Each such transaction shall be initiated solely on the order of the purchasing customer, and shall be for the account of the purchasing customer and not for the account of the banking institution.
- (2) **Non-recourse Transactions.** Each such transaction shall be entered into by the bank on an as-agent basis, without recourse to the banking institution.
- (3) **Compliance with Disclosure Requirements.** The banking institution shall comply with the disclosure requirements set forth in OAR 441-530-0060 to 441-530-0180 with respect to each such transaction.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

## **441-530-0180**

### **Disclosure Requirements**

- (1) **Advertising and Promotional Materials.** All advertising and promotional materials relating to the sale of mutual funds or interests in unit investment trusts shall clearly state that:
  - (a) The funds or interests in unit investment trusts do not constitute obligations of the bank and are not insured by the Federal Deposit Insurance Corporation or any other government agency; and
  - (b) The mutual funds or interest in unit investment trusts in question are not affiliated with or endorsed by the banking institution.
- (2) **Prospectus.** If any prospectus is furnished to the customer by the banking institution, it shall be accompanied by a statement that the bank is not affiliated with or endorsing the fund, but is furnishing the prospectus as a service to the requesting customer.

**(3) Disclosure to Customer; Acknowledgement of Disclosure:**

(a) **Requirement for Disclosure and Acknowledgement.** Before selling any mutual fund or interest in a unit investment trust, the bank shall prepare and the customer shall be provided with a written disclosure statement meeting the requirements of this subsection, and shall sign a statement acknowledging receipt of the disclosure statement;

(b) **Required Contents of Disclosure Statement.** The disclosure statement shall at a minimum contain provisions to the effect that:

(A) Any mutual funds or interests in unit investment trusts that may be purchased from or through the banking institution have not been underwritten by the banking institution and are not insured or guaranteed by the banking institution, the Federal Deposit Insurance Corporation or any other government agency;

(B) Interests in mutual funds or in unit investment trusts may fluctuate in value;

(C) There is no assurance or guarantee that there will be a market for the resale of any interests in mutual funds or unit investment trusts which may be purchased;

(D) The yield (if any) from interests in mutual funds or unit investment trusts may fluctuate, and the past performance of any such interests should not be regarded as an indication of future performance.

(e) **Additional Contents of Disclosure Statements.** The disclosure statement may contain any other information which is not inconsistent with the information required to be disclosed under this rule;

(d) **Acknowledgement of Disclosure.** The acknowledgement statement to be signed by the customer shall state in substance that the customer has read and received a copy of the disclosure statement.

Stat. Auth.: ORS 706.790 & 706.795

Stats. Implemented: ORS 706.790 & 706.795

Hist.: FCS 2-1991, f. & cert. ef. 8-20-91

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 540**

**STOCKHOLDERS, DIRECTORS, AND OFFICERS**

**Directors**

**441-540-0000**

**Official Communications; Notation in Minutes of Board**

The board of Director shall review any communication from the Director or an examiner that is designated an official communication and is submitted to the board pursuant to ORS 707.730 and shall make the communication a part of the record of the meeting. The record of the meeting shall also show any action taken by the board in response to the communication. The communication, or the record of the meeting referring to the communication, shall be signed by each director present at the meeting at which the communication is received.

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 707.730

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-013-0055

**Operational Audits and Financial Statements**

**441-540-0010**

**Definitions; Operative Date of OAR 441-540-0010 to 441-540-0050**

(1) As used in OAR 441-540-0010 to 441-540-0050, unless the context requires otherwise:

(a) "Banking Institution" has the meaning given that term by ORS 706.005.

(b) "Financial Statement Review" means the review of the financial statement of a banking institution as required by ORS 707.855.

(c) "Operational Audit" means the operational audit of a banking institution as required by ORS 707.849.

(d) "Director" means the Director of the Department of Consumer and Business Services of the Finance and Corporate Securities Division.

(2) OAR 441-540-0010 to 441-540-0050 apply to every operational audit and financial statement review contracted for and made after July 1, 1985.

Stat. Auth.: ORS Ch. 707

Stats. Implemented: ORS 706.005, 707.849, 707.855 & 707.860

Hist.: FID 4-1986, f. & ef. 7-25-86; Renumbered from 805-013-0100

## **441-540-0020**

### **Standards and Requirements for Operational Audit**

(1) The purpose of an operational audit is to determine whether the banking institution has internal accounting and operational policies and controls in effect that are operating effectively, adequate to ensure the orderly and efficient conduct of the institution's business, including but not limited to, policies and controls to ensure:

(a) The safeguarding of assets;

(b) The reliability and adequacy of financial and accounting records; and

(c) The timely preparation of reliable financial information.

(2) The operational audit shall include, but need not be limited to:

(a) Study and evaluation of the internal control environment and the risk areas of the banking institution;

(b) Identification, review and evaluation of key internal controls; and

(c) Tests on and verifications of the internal controls to ensure they are operating effectively.

(3) The **Operational Audit Guidelines**, dated May 1986, published by the Administrator are hereby adopted and apply to the performance of operational audits.

(4) The auditor conducting the operational audit for a banking institution shall prepare a report of the audit. The report shall be prepared for submission to the board of directors of the banking institution and shall be in a format consistent with guidelines for bank audit reports recommended and published by the American Institute of Certified Public Accountants.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 707

Stats. Implemented: ORS 707.849 & 707.860

Hist.: FID 4-1986, f. & ef. 7-25-86; Renumbered from 805-013-0105

**441-540-0030****Standards and Requirements for Review of Financial Statements of Banking Institutions; Wavier of Review**

- (1) The annual review of the financial statement of a banking institution required by ORS 707.855 shall be attested to by a certified public accountant. In so doing, the CPA responsible for the review may rely on information derived from the operational audit reports prepared for the banking institution.
- (2) A review of a banking institution's financial statement is the performance of inquiry and analytical procedures sufficient to provide a CPA with a reasonable basis for expressing limited assurance that no material modifications should be made to the financial statement for it to conform with Generally Accepted Accounting Principles.
- (3) An application for waiver of the requirement to obtain a financial statement review will be granted by the Director, as authorized by ORS 707.855(5) if:
- (a) The banking institution obtains an opinion audit of its financial statement in lieu of the review; or
  - (b) Furnishes other evidence that the banking institution is sufficiently sound to warrant a waiver.
- (4) An auditor who issues a financial statement review shall be familiar with the practices, principles, regulatory requirements and general economic environment unique to the banking industry, and have a specific understanding of the subject banking institution's business.
- (5) The financial statement review shall be prepared on the CPA's letterhead and be addressed and delivered to the Board of Directors of the banking institution. A copy of the review shall be delivered to the Director of the Department of Insurance and Finance. The review shall contain:
- (a) The date of the financial statement reviewed;
  - (b) The date of review;
  - (c) A statement as to whether the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;
  - (d) The scope of the review process;
  - (e) Sources relied upon for the review; and
  - (f) A statement as to whether any material modification should be made to the financial statement for it to conform with Generally Accepted Accounting Principles.

Stat. Auth.: ORS Ch. 707

Stats. Implemented: ORS 707.855 & 707.860

Hist.: FID 4-1986, f. & ef. 7-25-86; Renumbered from 805-013-0110

**441-540-0040****Standards of Fitness, Training and Professional Competence of Persons Performing Operational Audits, Financial Statement Reviews; Administrator Investigation of Such Persons**

(1) An individual employed by a banking institution to conduct an operational audit or financial statement review shall demonstrate:

- (a) Technical competence through a record of continuing education relating to the audit function; and
- (b) Proficiency as it relates to skill and judgment acquired through experience.

(2) Technical competence may be demonstrated:

- (a) Through the successful completion annually of a course of study relating to auditing and the banking industry; or
- (b) By attending an annual seminar specifically designed to educate and enlighten bank auditors.

(3) Proficiency may be demonstrated by:

- (a) Experience; or
- (b) Working toward accreditation as a bank auditor by any of the industry-wide recognized accrediting institutions, such as the American Institute of Banking, the American Bankers Association, the Oregon Bankers Association or other professional associations concerned with bank auditing.

(4) The general fitness, honesty and ability of any person employed to conduct an audit or review will be investigated by the Director as authorized by ORS 707.860(2):

- (a) On request of the banking institution; or
- (b) On the Director's own initiative.

(5) A request submitted to the Director by a banking institution shall set out the qualifications and fitness of the individual, as known to the banking institution. The Director will act on the request and issue a determination within 20 days after the request is filed with the Department.

Stat. Auth.: ORS Ch. 707

Stats. Implemented: ORS 707.855 & 707.860

Hist.: FID 4-1986, f. & ef. 7-25-86; Renumbered from 805-013-0115

## **441-540-0050**

### **Independent Auditor Exemption; Basis for Granting; Procedure; Revocation of Exemption**

(1) When a banking institution wishes to be exempt from the requirement in ORS 707.849 that the operational audit be conducted by an independent auditor, the banking institution shall submit a request for exemption to the Director setting out the circumstances that justify the exemption.

(2) In determining whether to grant the request of a banking institution to be exempt, the Director will consider:

- (a) The comments and conclusions of the examiner contained in the most recent examination report of the banking institution; and
- (b) Whether the banking institution's internal audit function demonstrates substantial compliance with:

(A) The minimum standards as set forth in the Director's **Operational Audit Guidelines** adopted by OAR 441-540-0020; and

(B) The spirit and intent applicable to operational audits as set forth in the Administrator's **Operational Audit Guidelines**, including form, content and timeliness of such reports as submitted to the banking institution's board of directors and to the Director.

(3) An exemption granted under this rule is subject to review during each examination of the banking institution; and the exemption may be revoked by the Director whenever circumstances that were the basis of granting the exemption change materially.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 707

Stats. Implemented: ORS 707.860

Hist.: FID 4-1986, f. & ef. 7-25-86; Renumbered from 805-013-0120

#### **441-540-0060**

### **Reporting of Extensions of Credit by Banking Institutions to Executive Officers, Directors, Principal Shareholders and Related Interests**

(1) Quarterly and in conjunction with regular reports of condition, banking institutions shall complete form 416-0105N (Rev 3/89) entitled "Obligations of Executive Officers, Directors, Principal Shareholders and Related Interests." The completed report shall be submitted with the regular report of condition to the Director.

(2) Definitions for the terms Extensions of Credit, Executive Officers, Directors, Principal Shareholders and Related Interests are the same as those contained in Federal Reserve Regulation O, 12 C.F.R. 215.2 and 215.3. Where the term Member Bank is used in these definitions, for purposes of this rule, the term Banking Institution is substituted.

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 706.655 & 708.460

Hist.: FID 1-1987, f. & ef. 1-5-87; Renumbered from 805-013-0200; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 550**

**BRANCH BANKING**

**CBCTs: ORS 714.200 to 714.270, 714.992**

**441-550-0000**

**Definitions**

As used in OAR 441-550-0000 to 441-550-0020:

- (1) "Financial Institution" has the meaning given the term by ORS 706.005 and in addition includes a national bank, an extranational institution or a foreign institution with branches in this state.
- (2) "CBCT" means a customer-bank communication terminal as the term is defined by ORS 706.005

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 706.005, 714.200, 714.260 & 716.645

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-016-0210; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

**441-550-0010**

**When Notice of Use or Installation Required; Contents of Notice**

Within 30 days after any CBCT is installed by a financial institution, the financial institution shall send to the Director's office written notice of the installation. If the CBCT is installed or shared by a national bank, a copy of the notice shall also be sent to the appropriate federal regulatory agency. The notice shall describe with regard to the CBCT:

- (1) The location and the number of customer terminals at the location;

- (2) A general description of the area where located (e.g., shopping center, supermarket, department store, etc.) and the manner of installation at that location;
- (3) The manner of operation, including whether the device is on-line;
- (4) The kinds of transactions that will be performed;
- (5) Whether the CBCT will be manned and, if so, by whose employes and whether the persons involved will be bonded;
- (6) Whether the CBCT is shared and, if so, under what terms and with what other financial institutions;
- (7) The manufacturer and, if owned, the purchase price or, if leased, the lease payments and the name of the lessor;
- (8) Consumer protection procedures, including the disclosure of rights and liabilities of consumers and protection against wrongful or accidental disclosure of confidential information; and
- (9) Insurance and the security provisions protecting the installation and its users.

Stat. Auth.: ORS Ch. 714

Stats. Implemented: ORS 706.005, 714.200, 714.260 & 716.645

Hist.: BB 13, f. & cert. 3-5-76; Renumbered from 805-016-0220; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

## **441-550-0020**

### **Additional Notice Requirements; Exceptions**

- (1) Written notice must be given to the Administrator's office, and to the office of the appropriate federal regulatory agency if the CBCT was installed by or is shared by a national bank, within 30 days after removal of a CBCT or after a change in any of the operations described in a notice previously given pursuant to OAR 441-550-0010. One or more financial institutions sharing one or more CBCTs may give a single notice to the Administrator's office and to the office of each appropriate federal regulatory agency who supervises one or more of the financial institutions involved.
- (2) A notice required by this section shall make current the information listed in OAR 441-550-0010 for each shared CBCT. The Administrator reserves the right to adopt different reporting procedures as warranted by the circumstances of a particular network of CBCTs.
- (3) Notice need not be given for any device or machine that is a part of a financial institution's authorized main office or its branches.

Stat. Auth.: ORS. Ch. 714

Stats. Implemented: ORS 706.005, 714.200, 714.260 & 716.645

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-016-0230; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 560**

**RESERVES**

**Changing Minimum Under ORS 708.100**

**441-560-0000**

**Reduction of Reserve Requirements**

The minimum amount of the reserves required under ORS 708.100 are reduced to an amount equal to 12 percent of the total demand deposits and four percent of the total time deposits.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.100 & 708.116

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-022-0010; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

**441-560-0010**

**Method of Computing Reserves**

(1) For the purpose of determining the reserves required under ORS 708.100 to 708.146, an institution shall exclude any deposits of the United States.

(2) Reserves required by ORS 708.100 to be on hand at all times shall not include any cash items, but may include:

(a) Any deposit payable on demand in a reserve institution approved by the Director or, to the extent the deposit is insured by the Federal Deposit Insurance Corporation, in a financial institution or a national bank;

(b) Unpresented checks received in the regular course of business and payable forthwith, if the checks are drawn on another solvent financial institution, foreign institution, national banking association, or other solvent business

organization with authority to issue checks; and

(c) For the reserve required on time deposits, unpledged direct obligations of the United States that mature within one year.

(3) This rule does not apply if the institution is subject to the regulations of, and its reserves meet the requirements of, the Federal Reserve Bank.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.100, 708.108, 708.116 & 708.126 - 708.146

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-022-0020; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

## **441-560-0020**

### **Daily Determination of Reserve Required**

(1) Each institution shall retain at its principal office in this state a record of its daily determination of the required reserves. The daily determination of the required reserves shall show:

(a) The date;

(b) The total demand and the total time deposits;

(c) The total of such deposits considered in determining the required reserves;

(d) The amount of the required reserve;

(e) The amount of the reserve on hand; and

(f) The amount of any excess or deficiency.

(2) A reconciliation shall be prepared explaining any difference between the total demand and time deposits on hand, and the total of such deposits used in determining the required reserves.

(3) The records of an institution's daily determinations of required reserves shall be kept in looseleaf binders that are appropriately identified. The binders shall include copies of safekeeping receipts representing investment of reserve designated for the reserve required on time deposits. The safekeeping receipts shall be maintained, in chronological order, at the beginning of such binders to substantiate the availability of such unpledged obligations on any given date. The records shall be available at all times to the Director, his deputies, and examiners.

(4) This rule does not apply when the institution is complying with the records regulations for reserves required by the Federal Reserve Bank.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.100 & 708.116

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-022-0025; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 570**

**BORROWING, REDISCOUNTING, AND PLEDGING ASSETS**

**441-570-0000**

**Issuing and Rediscounting Notes, Pledging Assets of an Institution Regulated**

(1) The board of directors of an institution may, by general or special resolution entered in the minutes of the board meeting, authorize any officer, director or employe of the institution to engage in one or more of the kinds of transactions specified by subsection (2) of ORS 708.205.

(2) The board of directors of an institution shall not, pursuant to ORS 708.205(2), authorize the issuance of any note for borrowed money or the execution of an agreement pledging any assets of the institution, unless the note or pledge agreement is in a legal form approved by counsel for the institution.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.205

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-023-0055

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 580**

**LOAN AND INVESTMENTS**

**Loans**

**441-580-0000**

**Maximum Rates of Interest; Grant of Most Favored Lender Status; Effective Date**

(1) As used in this rule:

(a) "Bank" means a bank as defined by ORS 706.005(2), and the term includes a savings bank as defined by ORS 706.005(22), and an extranational institution as defined by ORS 706.005(13);

(b) "Financial institution" means a national bank as defined by ORS 706.005(18), a state or federally chartered savings association, state or federally chartered credit union, consumer finance company and pawnbroker.

(2) Any bank may contract for and receive on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest at a rate not to exceed the maximum rate any financial institution authorized to do business in this state is allowed by the statutes and regulations of this state for making or taking such a loan, discount, note, bill of exchange or other evidence of debt. The maximum rate allowed by this rule applies if it is greater than either the maximum rate allowed banks by the statutes and regulations of this state, or the maximum rate allowed by the federal statutes and regulations, for making or taking such a loan, discount, note, bill of exchange or other evidence of debt.

(3) This rule is effective November 18, 1980. It applies only to evidences of debts made or taken on or after November 18, 1980.

Stat. Auth.: ORS Ch. 706

Stats. Implemented: ORS 706.005

Hist.: BB 2-1980(Temp), f. & ef. 11-17-80; BB 2-1981, f. 4-8-81, ef. 4-9-81; Renumbered from 805-024-0050

## **441-580-0010**

### **Transfer of Installment Consumer Paper Obligations**

Indorsement or guarantee of an obligation to a bank, within the limitation provided by subsection (1) of ORS 708.325, shall be made on the consumer paper in a clear and visible manner and signed by the person transferring the obligation.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.325

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0055

## **Real Estate Under ORS 708.395 to 708.420**

## **441-580-0020**

### **"Paid in Capital", "Undivided Profits" Defined**

As used in ORS 708.400, "paid up capital" includes only paid in unimpaired capital; and "undivided profits" includes net profits and losses from current operations.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.400, 708.405 & 708.410

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0110

## **441-580-0030**

### **Property Acquired For or Used For Place of Business; Disposition If Not So Used**

(1) An institution shall, in accordance with ORS 708.410, sell or reduce the book value of real estate:

- (a) Purchased for future location or expansion of its business, if the real estate is not so used within two years after the date of acquisition; or
- (b) Formerly used as a place to carry on the business of the institution, if it is not so used again within two years after such use is discontinued.

(2) The Director may, upon request by an institution, grant an extension of the two-year period if good reason is shown by the institution.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.400, 708.405 & 708.410

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0115

**441-580-0040****Real Estate; Book Value**

The value of a parcel of real estate acquired as a result of a previous investment shall, on the books of the institution, include only the balance of the principal of the loan plus costs incurred after acquisition to make improvements that are necessary to place the property in a saleable condition. Accrued interest on the loan, taxes, attorney fees, and other costs incurred prior to acquisition shall be charged to undivided profits or other appropriate expense accounts.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.400, 708.405 & 708.410

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0120

**441-580-0050****Appraisal Required**

Real estate acquired by an institution as a result of a previous investment shall be appraised at the time of such acquisition. If the value of the real estate on the books of the institution, when valued in accordance with OAR 441-580-0040, exceeds the appraised value at the time of the acquisition, the institution shall immediately charge off the difference. Thereafter the institution shall proceed to reduce the book value of, sell or exchange, the real estate in accordance with ORS 708.410.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.400, 708.405 & 708.410

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0130

**441-580-0060****Real Estate Sales Contracts; Book Value**

A real estate sales contract taken in connection with the sale of Other Real Estate Owned need not conform with the limitations on real estate loans provided by ORS Chapter 708. However, if the sale price exceeds the book value of the real estate held as Other Real Estate Owned, any potential profit shall be reserved in a deferred gains account. The profit may be accredited and taken into earnings in proportion to principal reductions until the contract conforms with real estate loan limitations. Property sold under a contract of sale shall be carried as Real Estate Sold Under Contract until the contract is paid out or sold.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.400, 708.405 & 708.410

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0140

**441-580-0070****Reduction of Book Value**

(1) Book value shall be reduced as required by ORS 708.410 and OAR 441-580-0050 and 441-580-0060 by crediting the assets, and either:

- (a) Debiting general loss reserves or a valuation reserve set up specifically for that purpose; or
- (b) Debiting current earnings or undivided profits.

(2) Book value shall be reduced annually in an amount equal to five percent of the original book value as established pursuant to OAR 441-580-0050.

(3) The annual reduction of book value must be entered on the financial records of the institution no later than each anniversary after title has vested, unless the time is extended by prior written consent of the Director.

Stat. Auth.: ORS Ch. 708.410

Stats. Implemented: ORS 708.400, 708.405 & 708.410

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-024-0150; FCS 2-1990, f. 5-18-90, cert. ef. 5-21-90

## **441-580-0080**

### **Guidelines for Exceeding Restrictions on Ownership of Real and Personal Property Used in Business**

(1) An institution may exceed the limitations on the ownership of real and personal property established by ORS 708.400 to the extent the Director determines that it is prudent and reasonable to exceed such limitations, taking into consideration such factors as capital adequacy, liquidity, profitability, cash flow and management capabilities.

(2) When an institution wishes the permission of the Director to exceed such limitations, it shall submit to the Director a request, detailing the proposed acquisition, the reason for the need to exceed the limitations, the factors that would indicate the proposal is prudent and reasonable and such other information as the Director may require to make a determination. The Director shall respond to such a request within 30 days after it is received. Any costs incurred by the Director in investigating and making a decision on the request shall be paid by the requesting institution.

Stat. Auth.: ORS Ch. 708

Stats. Implemented: ORS 708.400

Hist.: BB 4-1978, f. 7-18-78, ef. 7-20-78; Renumbered from 805-24-160

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 590**

**SUBSIDIARIES OF INSTITUTIONS**

**Loans and Investments**

**441-590-0000**

**"Subsidiary" Defined**

For the purposes of OAR 441-590-0000 to 441-590-0180, "subsidiary" means a corporation in which a financial institution may hold stock, as authorized by ORS 708.430(3) or 716.588.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430 & 716.588

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-027-0050

**441-590-0010**

**Authorized Security Investments of Subsidiary**

A subsidiary on its own account may invest in securities as authorized by the Bank Act. However, the Bank Act limitations and restrictions on dealing in securities on its own account do not apply to dealing in the kinds of obligations that are, under **12 U.S.C. 24** (Seventh), exempt from the restrictions applicable to investments that national banks may make.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth: ORS Ch. 706 & 708

Stats. Implemented: ORS 706.795, 708.430 & 716.588

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-027-0060

## **441-590-0020**

### **Examination and Supervision of Subsidiary**

A subsidiary is subject to examination and supervision by the Director in the same manner and the same extent as the parent financial institution. The Director may order the parent financial institution to dispose of all or any part of the stock of a subsidiary, upon such terms as he considers proper, if he finds that:

- (1) The subsidiary is created or is being operated in violation of the Bank Act or the regulations adopted pursuant thereto; or
- (2) The manner of operation is detrimental to the business of the parent financial institution or its depositors.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430 & 716.588

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-027-0070

## **441-590-0030**

### **Authorized Activities of a Bank Subsidiary**

- (1) In addition to any business that a subsidiary is specifically authorized by law to engage in, a subsidiary of a financial institution may:
  - (a) Service mortgages;
  - (b) Lease property;
  - (c) Act as an investment agent dealing exclusively in securities eligible for investment by domestic financial institutions, and prepare monthly reports and economic market analyses;
  - (d) Act as safekeeping agent for securities purchased for customers.
- (2) Except as permitted by OAR 441-590-0010, the business of dealing in securities shall be limited to purchasing and selling securities without recourse, solely upon the order and for the account and risk of customers, and in no case for its own account.
- (3) A subsidiary shall not underwrite an issue of securities or stock, except to the extent and in the manner national banks are permitted to do so under **12 U.S.C. 24** (Seventh).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430 & 716.588

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-027-0080

## **Dealing in Stock of Parent Institution**

### **441-590-0040**

#### **Purpose of Rules**

OAR 441-590-0040 to 441-590-0180 are adopted pursuant to ORS 708.430(5) to regulate an institution's subsidiary that engages in the acquisition and marketing of the fully paid stock of the institution.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0405

### **441-590-0050**

#### **Definition of "Associated Person"; "Bank-Stock Dealer"; "Broker-Dealer"; "Investment Adviser"; "Customer"; "Subsidiary"**

As used in OAR 441-590-0040 to 441-590-0180, unless the context requires otherwise:

- (1) "Associated Person" means an officer, director, or branch manager of a subsidiary or the parent institution of the subsidiary, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the subsidiary, including an employe of the subsidiary; however, for the purposes of OAR 441-590-0080, 441-590-0150(6), and 441-590-0170, the term does not include persons whose functions are only clerical or ministerial.
- (2) "Bank-Stock Dealer" or "Dealer" means an individual designated by the board of directors of a subsidiary and registered with the Director as provided by OAR 441-590-0060.
- (3) "Broker-Dealer" and "Investment Adviser" have the meaning given those terms by ORS Chapter 59, and the administrative rules adopted pursuant to ORS Chapter 59.
- (4) "Customer" means the person to whom a subsidiary sells or from whom it buys stock of the parent institution.
- (5) "Subsidiary" means a subsidiary created for the purposes authorized by ORS 708.430(4).

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0410

### **441-590-0060**

#### **Registration of Bank-Stock Dealer Required; Cancellation, Revocation, Renewal: Fees**

- (1) Whenever a subsidiary has been formed for the purposes authorized by ORS 708.430(5), and the subsidiary wishes

to engage in the business of purchasing the stock of the parent institution and creating a market for it as authorized by ORS 708.430(5), the board of directors of the subsidiary shall designate a qualified officer, employe, or associate of the subsidiary as the bank-stock dealer for the subsidiary and cause the individual to be registered with the Director in accordance with this section.

(2) When an individual has been designated in accordance with section (1), the subsidiary shall file an application for registration with the Director and pay a registration fee of \$50. The application shall contain:

- (a) The name, business address, and position of the individual;
- (b) A certified copy of the record of the board action designating the individual as bank-stock dealer;
- (c) A description of the individual's training, experience, and other facts relevant to the individual's qualifications as a dealer in securities; and
- (d) Any other relevant information regarding control of and by the individual by the parent institution.

(3) If the individual designated by the subsidiary is qualified, the Director will approve the designation, register the individual as a bank-stock dealer, and issue to the individual a certificate of registration valid for one year from date of issue. The Director will cancel a registration upon the request of the subsidiary or the dealer. If a subsidiary wishes to continue the registration of an individual as a bank-stock dealer of the subsidiary, it shall annually one month before the anniversary date of the certificate of registration, request renewal of the certificate of registration and pay the annual registration fee of \$50 to the Director.

(4) In addition to the provisions of OAR 441-590-0040 to 441-590-0180, the provisions of ORS 59.005 to 59.445 apply to the granting, issuance, suspension, and revocation of certificates of registration of bank-stock dealers. However, in applying those sections:

- (a) "Director" shall be substituted for "Corporation Commissioner" and terms of similar import;
- (b) "Bank stock" shall be substituted for "securities".

(5) An individual registered with the Director as a bank-stock dealer has authority, for the account of the subsidiary for which the individual is designated, to deal in the fully paid stock of the parent institution. Such a dealer may be authorized by the board of directors of the subsidiary to designate other employes and officers to assist him in the performance of his responsibilities; however, the registered dealer shall be responsible for the actions of, or failure to act by, such individuals.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0415

#### **441-590-0070**

#### **Authority of Subsidiary and Bank-Stock Dealer; Cash Only Transactions; Limits on Borrowing and Lending; Duty to Furnish Financial, Proxy Statements to Customers**

(1) A subsidiary authorized by ORS 708.430(5) may deal only in the stock of the parent institution. A subsidiary may deal in such stock only through a designated bank-stock dealer registered in accordance with OAR 441-590-0060. All transactions for the sale or purchase of bank stock by a subsidiary shall be cash only transactions. A subsidiary shall not borrow money from its parent institution and it shall not loan money.

(2) A bank-stock dealer shall furnish to each customer copies of the annual financial statements of the bank for the preceding four years together with the most recent quarterly statement and, if requested, a copy of the most recent proxy statement when such a statement is required under applicable federal law.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0420

#### **441-590-0080**

##### **Customer and Account Records Required to be Kept by Dealer**

(1) A dealer shall make and keep current a record for each person who is a customer. The record shall state:

- (a) The customer's name and address;
- (b) Whether the customer is of legal age;
- (c) The customer's tax identification or Social Security number;
- (d) The signature of the associated person regularly handling the account; and
- (e) A supervisor designated pursuant to OAR 441-590-0170.

(2) The information required by subsection (1)(b) of this rule need not be contained in the customer's record if, after reasonable inquiry, the customer declines to furnish the information and a statement to that effect is placed in the record.

(3) A dealer shall make and keep current a separate file for all complaints by customers and persons acting on behalf of customers. Such complaints shall be filed alphabetically by customer's name and shall include copies of all material relating to the complaint and a record of what action, if any, has been taken by the dealer. Copies of such material and record of action taken shall be kept in the office through which the customer's account is handled.

(4) A dealer shall preserve all records required by this section for not less than six years. The records for the most recent two years shall be kept in a place that is easily accessible to the dealer but thereafter, a photograph or film may be substituted for the records for the balance of the required time.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0425

#### **441-590-0090**

##### **Business Records Required to be Kept by Dealer**

A dealer shall make and keep current the following books and records relating to his business:

- (1) Blotters (or other records of original entry) containing an itemized daily record of:
  - (a) All purchases and sales of bank stock;

(b) All receipts and deliveries of bank stock (including certificate numbers); and

(c) All receipts and disbursements of cash and all other debits and credits.

(2) The records required by section (1) shall show the account for which the transaction was effected, the name and the amount of stock, the unit and aggregate purchase or sale price (if any), the trade date, the name or other designation of the person from whom purchased or received, or to whom sold or delivered.

(3) Ledgers (or other records) reflecting all assets and liabilities, and income and expenses, and capital accounts.

(4) Ledgers (or other records) reflecting:

(a) Bank stock in transfer;

(b) Dividends and interest received;

(c) Monies borrowed (together with a record of the collateral therefor and any substitutions in such collateral); and

(d) Bank stock failed to receive and failed to deliver.

(5) Copies of confirmations of all purchases and sales of bank stock and copies of notices of all other debits and credits for bank stock, cash, and other items for the account of customers and associated persons.

(6) A record of the proof of money balances of all ledger accounts in the form of trial balances.

(7) The questionnaire or application for employment executed by the bank-stock dealer and by any officer, employe, or other person assisting the dealer which shall have been approved in writing by an authorized representative of the dealer, and which shall contain:

(a) His name, address, Social Security number, and starting date of employment or association with the dealer;

(b) The educational institutions attended and courses taken or degrees earned;

(c) A complete consecutive statement of his business connections for the immediately preceding ten years, with his reason for leaving each, and whether the employment was part time or full time;

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

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

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

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

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0430

**441-590-0100****Records to be Preserved by Dealer**

- (1) A dealer shall preserve for a period of not less than six years all records required to be made pursuant to OAR 441-590-0090(1) and (3).
- (2) A dealer shall preserve for a period of not less than three years:
- (a) All records required to be made pursuant to OAR 441-590-0090(4) and (5);
  - (b) All checkbooks, bank statements, canceled checks, and cash reconciliations;
  - (c) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of the subsidiary;
  - (d) Originals of all communications received and copies of all communications sent by the dealer (including interoffice memoranda and communications) relating to the business of the subsidiary;
  - (e) All trial balances, computations of aggregate indebtedness, and net capital (and working papers in connection therewith), financial statements, branch office reconciliations and internal audit working papers, relating to the business of the subsidiary;
  - (f) Copies of resolutions empowering an agent to act on behalf of a corporate customer in respect to any account;
  - (g) All written agreements (or copies thereof) entered into by the dealer relating to the business of the subsidiary, including agreements with respect to any account.
- (3) A dealer shall preserve for a period of not less than six years after the closing of a customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

Stat. Auth: ORS Ch 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0435

**441-590-0110****Notice of Complaint**

- (1) When a subsidiary, bank-stock dealer, or associated person files a complaint against any associated person or its related subsidiary or bank-stock dealer with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, it shall send a copy of such complaint to the Director within 10 days following the filing with such other agency or bonding company.
- (2) A copy of any finding, censure, fine, suspension, or expulsion made as a result of any such complaint shall be filed with the Director within ten days following such action.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0440

**441-590-0120****Duty of Bank-Stock Dealer not to Engage in Certain Practices**

(1) A bank-stock dealer shall not engage in any dishonest, fraudulent, illegal, unfair, or unethical practice or conduct, or in any prohibited practice.

(2) The Director may revoke, suspend, or deny the registration of a bank-stock dealer if the individual has engaged or is engaging in any dishonest, fraudulent, illegal, unfair, or unethical practice or conduct, or any prohibited practice.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0445

**441-590-0130****Certain Practices Defined**

Dishonest, fraudulent, illegal, unfair, and unethical practices and conduct include, but are not limited to:

(1) Any act, practice, or course of business which operates or could operate as a fraud or deceit upon any person.

(2) The making of any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading.

(3) Any representation by a person that the registration of a person with the Director, or the failure of the Director to deny or revoke such registration, indicates in any way that the Director has passed upon or approved the financial standing, business, or conduct of any person or the merits of any security or any transaction or transactions therein.

(4) Any act of a dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, bank stock, unless:

(a) The dealer, before entering into any contract with or for the customer for the purchase or sale of the bank stock discloses to the customer the existence of the control by the issuer of the bank stock; and

(b) The disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(5) Any act of a dealer who is acting for a customer, or for both the customer and some other person, designed to effect with or for the account of the customer any transaction in, or to induce the purchase or sale by the customer of any bank stock if the dealer is participating in the distribution of the stock or is otherwise financially interested, unless the dealer at or before the completion of each such transaction gives or sends to the customer written notification of the existence of such participation or interest.

(6) Any representation made to a customer by a dealer that the bank stock (if being offered to the customer "At the Market" or at a price related to the market price), unless the dealer knows or has reasonable grounds to believe that a market for such bank stock exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling, or under common control with him.

(7) The making of a fictitious quotation to effect a transaction in or to induce or attempt to induce the purchase or sale of, any bank stock.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0450

## **441-590-0140**

### **"Making a Fictitious Quotation" Defined**

(1) As used in OAR 441-590-0140, "making a fictitious quotation" means for a dealer to furnish or submit, directly or indirectly, any quotation for a bank stock to an inter-dealer-quotation system, unless:

(a) The system is informed, if such is the case, that the quotation is furnished or submitted:

(A) By a correspondent broker-dealer for the account or in behalf of another broker-dealer and, if so, the identity of such other; and/or

(B) In furtherance of one or more other arrangements between or among broker-dealers and, if so, the identity of each participant; and

(b) The system to which the quotation is furnished or submitted makes it a general practice to disclose, with each published quotation, the category or categories in furtherance of which the quotation is submitted and the identities of all other broker-dealers or bank-stock dealers where such information is supplied to the system.

(2) "Making a fictitious quotation" means also for a broker-dealer or bank-stock dealer to enter into any correspondent or other arrangement in furtherance of which two or more such dealers furnish or submit quotations with respect to a particular bank stock, unless such broker-dealer or bank-stock dealer informs all dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements, and the identity of the parties thereto.

(3) As used in this section:

(a) "Inter-dealer-quotation system" means any system of general circulation to broker-dealers and bank-stock dealers in Oregon which regularly disseminates quotations of identified broker-dealers and bank-stock dealers, but the term does not include a quotation sheet prepared and distributed by a broker-dealer or a bank-stock dealer in the regular course of his business and containing only quotations of such broker-dealer or bank-stock dealer publishing the sheet.

(b) "Quotation" means any bid or offer, or any indication of interest in any bid or offer.

(c) "Correspondent" means a broker-dealer or bank-stock dealer who has a direct line of communication to another broker-dealer or bank-stock dealer located in a different city or geographic area.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0455

## **441-590-0150**

## Fair Dealing with Customers Required; Prohibited Practices

Prohibited practices include:

- (1) In any transaction for or with a customer, failing to use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.
- (2) Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited, such as the purchase of "Hot Issues".
- (3) Causing the execution of transactions which are unauthorized by customers.
- (4) Giving, permitting to be given, or offering to give, directly or indirectly, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security; however, this section shall not be construed to apply to matter that is clearly distinguishable as paid advertising.
- (5) Guaranteeing a customer against loss in any transaction effected by the dealer with or for such customer.
- (6) Recommending to a customer the purchase, sale, or exchange of any bank stock or other security.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0475

### 441-590-0160

#### Advertisements by Bank-Stock Dealers; When a Prohibited Practice

- (1) It is a prohibited practice to publish, circulate, or distribute any advertisement which refers, directly or indirectly, to past transactions:
  - (a) Unless the advertisement sets out or offers to furnish a list of all past transactions within the immediately preceding period of not less than one year, and the advertisement and the list, if furnished separately:
    - (A) State the name of the security, the date and nature of the transaction, the market price at that time, and the price as of the most recent practicable date; and
    - (B) Contains the following cautionary legend on the first page thereof, in print or type as large as the largest print or type used in the body or text thereof: **"It should not be assumed that the recommendations made in the future will be profitable or will equal the performance of the securities in this list"**.
  - (b) If the advertisement represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.
- (2) For the purposes of this section, "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television

useful in determining when to buy or sell a security.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0480

## **441-590-0170**

### **Supervision of Bank-Stock Dealer**

(1) The board of directors of a subsidiary of an institution authorized under ORS 708.430(5) shall exercise diligent supervision over the registered bank-stock dealer for the subsidiary and all of his associated persons.

(2) Every associated person of a dealer shall be subject to the supervision of a supervisor designated by the board of directors. The supervisor may be the dealer or an officer, office manager or any other qualified associated person.

(3) The board of directors shall adopt procedures to carry out this section and cause them to be enforced by the bank-stock dealer. A copy of the procedures shall be kept in each business office of the subsidiary. The procedures shall state at which office or offices the bank-stock dealer keeps and maintains the records required by OAR 441-590-0080.

(4) It is the duty of the board of directors of a subsidiary:

(a) To review and give written approval of the opening of each new customer account;

(b) To examine frequently all customer accounts to detect and prevent irregularities or abuses;

(c) To review promptly and to approve in writing all transactions by associated persons and all correspondence pertaining to the solicitation or execution of all transactions by associated persons;

(d) To review back office operations, i.e., all systems and procedures, including the currency and accuracy of books and records, the status and causes of "Fails to Receive" and "Fails to Deliver", net capital, credit extensions, and financial reports;

(e) To review the form, content, and filing of all correspondence related in any way to the purchase or sale, or the solicitation for purchase or sale of bank stock; and

(f) To review promptly and approve in writing the handling of all customer complaints.

(4) As used in this section, "complaint" of a customer means any written statement by a customer or by any person acting for a customer which complains about the activities of the dealer or any associated person in connection with the solicitation or execution of a transaction or the disposition of funds of that customer.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0485

## **441-590-0180**

### **Waiver of Rules by Director**

The Director may, either upon request or upon his own motion, waive or modify the application of any particular section of OAR 441-590-0040 to 441-590-0180 to a particular dealer when just and reasonable cause exists for such action, and the waiving or modifying of the rule would not be contrary to the provisions of the Oregon Securities Law, the Bank Act, or the public interest.

Stat. Auth: ORS Ch. 708

Stats. Implemented: ORS 708.430

Hist.: BB 2-1978, f. 3-16-78, ef. 4-1-78; Renumbered from 805-027-0490

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 600**

**COMPANIES CONTROLLING BANKS**

**441-600-0000**

**Loans to Holding Company or Company Controlled by Holding Company; Reports**

A loan made as authorized by subsection (1) of ORS 715.035 shall be reported to the Director within 30 days after the date of the loan.

Stat. Auth.: ORS Ch. 715

Stats. Implemented: ORS 715.035

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-028-0010

**441-600-0010**

**Fees and Charges of Companies Controlling Banks**

(1) As authorized by ORS 715.045, the Administrator will charge a bank holding company the actual costs the Director incurs to conduct an examination under ORS 715.045. Actual costs will include a charge for person used to conduct the examination.

(2) The rate of charge for each person from the Department payable by the bank holding company is \$60 an hour for each hour spent in conducting the examination at the site where the examination is conducted under ORS 715.045 and each hour spent in writing the report of the examination and performing related administrative tasks.

(3) Notwithstanding the rate of charge set by section (2) of this rule:

(a) If the examination is performed by a consultant hired by contract for the particular work, the charge is the actual cost to the Department of the contract consultant;

(b) If a person from the Department or the Director is required to travel out of state to conduct the examination, the rate of charge is \$60 an hour per person as provided by section (2) of this rule, plus actual travel from Salem, Oregon and subsistence expenses.

Stat. Auth.: ORS Ch. 715

Stats. Implemented: ORS 715.045

Hist.: FID 2-1986, f. & ef. 3-7-86; Renumbered from 805-028-0100; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 610**

**IMPAIRMENT OF CAPITAL**

**441-610-0000**

**Valuation of Bonds for Determining if Capital is Impaired**

For the purpose of determining whether capital is impaired, bonds held by an institution shall be valued by the institution at par if, in the opinion of the Director, it appears likely that the bonds will be carried to, and paid in full at, their maturity. If carrying to maturity and payment in full at maturity does not appear likely, the bonds shall be valued at market.

Stat. Auth.: ORS Ch. 711

Stats. Implemented: ORS 711.305

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-045-0010

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 620**

**INSOLVENCY**

**441-620-0000**

**Valuation of Bonds for Determining if Institution is Solvent**

For the purpose of determining if an institution is insolvent, bonds held by the institution shall be valued by the institution at par if, in the opinion of the Director, it appears likely that the bonds will be carried to, and paid in full at, their maturity. If carrying to maturity and payment in full at maturity does not appear likely, the bonds shall be valued at market.

Stat. Auth.: ORS Ch. 711

Stats. Implemented: ORS 711.405

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-046-0010

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## Oregon Administrative Rules 1998 Compilation

### DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE AND CORPORATE SECURITIES

#### DIVISION 630

#### ORGANIZATION OF MUTUAL SAVINGS BANKS

#### 441-630-0000

##### Annual License Fee

The license fee that a savings bank is required by ORS 716.110 to pay annually to the Director shall be determined by application of the schedule of filing fees in ORS 60.007 payable by business corporations. In applying the schedule to savings banks, the amount of the guaranty fund plus undivided profits of the savings banks shall be substituted for the value of authorized shares.

Stat. Auth.: ORS Ch. 716

Stats. Implemented: ORS 716.110

Hist.: BB 13, f. & ef. 3-5-76; FID 2-1986, f. & ef. 3-7-86; Renumbered from 805-061-0010

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 640**

**POWERS AND DUTIES OF A SAVINGS BANK**

**441-640-0000**

**Reduction of Reserve Requirement**

The minimum amount of the reserve funds of a savings bank required by ORS 716.760 is, pursuant to authority in ORS 716.760(2), reduced to 12 percent of the aggregate amount credited to demand deposits and four percent of the aggregate amount credited to time deposits.

Stat. Auth.: ORS Ch. 716

Stats. Implemented: ORS 716.760

Hist.: BB 13, f. & ef. 3-5-76; BB 1-1982, f. 3-31-82, ef. 4-1-82; Renumbered from 805-063-0010

**441-640-0010**

**Authorizing a Dividend of Less Than Four Percent**

A dividend of four percent need not be paid as required by subsection (2) of ORS 716.780 if payment would be imprudent.

Stat. Auth.: ORS Ch. 716

Stats. Implemented: ORS 716.780

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-063-0055

**441-640-0020**

## Scope and Purpose

- (1) **Scope and Purpose of Rule:** This rule authorizes savings banks and stock savings banks to accept demand deposits from any person without regard to any type of business, corporate or commercial loan relationship.
- (2) Notwithstanding the provisions of ORS 716.310(3), a savings bank or a stock savings bank may accept demand deposits from any person without regard to any type of business, corporate or commercial loan relationship. As used in this rule, "savings bank" means a savings bank as defined in ORS 706.005(22), "stock savings bank" means a stock savings bank as defined in ORS 706.005(28), and "person" means a person as defined in ORS 161.015(5).

Stat. Auth.: ORS 706.795

Stats. Implemented: ORS 706.005 & 716.310

Hist.: FCS 2-1992, f. & cert. ef. 5-19-92

## 441-640-0060

### Housing Agency Low Income Rental Housing Fund Client Trust Accounts

- (1) Every financial institution as defined in ORS 706.005, authorized by law to offer client trust accounts established pursuant to ORS 696.241 and to accept deposits to such accounts in Oregon may:
- (a) Make available to its depositors, client trust accounts, hereafter designated as Housing Agency Low Income Rental Housing Fund Accounts ("Housing Fund Accounts"); and
  - (b) Pay interest on all funds deposited in each Housing Fund Account at the same rate payable on similar accounts.
- (2) Each Housing Fund Account shall be created and maintained according to written agreement between the financial institution and participating depositor. Each agreement shall authorize the financial institution to pay all interest earned, net of fees and expenses imposed by the financial institution, to the Housing Agency Low Income Rental Housing Fund designated in Chapter 916, Oregon Laws 1989.
- (3) **Fees and Expenses:**
- (a) Each Housing Fund Account may be subject to fees and expenses which are reasonable and are customarily assessed by the financial institution for similar accounts;
  - (b) In no event shall a financial institution collect fees and expenses from a Housing Fund Account in excess of earned interest.
- (4) **Interest Remittances and Reports:**
- (a) Each participating financial institution shall remit to the Housing Agency any interest earned on each Housing Fund Account, net of reasonable fees and expenses. Remittance, if any, shall be made at least quarterly;
  - (b) Remittance may be made in a single aggregate installment representing net interest payable from all Housing Fund Accounts maintained by the financial institution.
  - (c) Each participating financial institution shall report to the Housing Agency information as to every Housing Fund Account maintained by the financial institution. The information shall be in writing and include identity of the Housing Fund Account by name, account number, interest earned, fees and charges, and net interest remitted, if any. Reports shall be made at least quarterly and may accompany any remittances.

(5) If a financial institution is required to produce tax information returns (Form 1099), the financial institution shall designate the State of Oregon Housing Agency Low Income Rental Housing Fund, as payee or recipient. Tax identification information shall be provided by the Housing Agency to participating financial institutions upon request.

Stat. Auth.: ORS Ch. 716

Stats. Implemented: ORS 706.005

Hist.: FCS 8-1989, f. 12-14-89, cert. ef. 1-1-90

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 650**

**AVAILABILITY OF FUNDS**

**441-650-0000**

**Definitions**

For purposes of these rules:

- (1) "Account" means a demand deposit account, NOW account, or share draft account at a depository institution.
- (2) "Business Day" means any day other than a Saturday, Sunday, or legal holiday.
- (3) "Cash" means United States coins and currency, including Federal Reserve notes.
- (4) "Cashier's Check" means any check which is drawn on a depository institution, is signed by an officer or employee of such institution, and is a direct obligation of such institution.
- (5) "Certified Check" means any check with respect to which a depository institution certifies that the signature on the check is genuine and that such institution has set aside funds which are equal to the amount of the check and will be used only to pay such check.
- (6) "Check" means any negotiable demand draft drawn on or payable through an office of a depository institution located in the United States. Such term does not include noncash items.
- (7) "Check Clearinghouse Association" means any arrangement by which participant depository institutions exchange deposited checks on a local basis, including an entire metropolitan area, without using the check processing facilities of the Federal Reserve System.
- (8) "Check Processing Region" means the geographical area served by a Federal Reserve bank check processing center.
- (9) "Depository Check" means any cashier's check, certified check, teller's check and any other functionally equivalent instrument.
- (10) "Depository Institution" has the meaning given such term in Clauses (i) through (vi) of Section 19(b)(1)(A) of the

Federal Reserve Act (**12 U.S.C. 461(b)(1)(A)**).

(11) "Local Originating Depository Institution" means:

- (a) A bank or national bank having "1230" or "1232" as the first four numbers of its routing number; or
- (b) Any other depository institution having "3230", "3231", "3232", or "3233" as the first four numbers of its routing number.

(12) "Noncash Item" means:

- (a) A check or other demand item to which a passbook, certification or other document is attached; or
- (b) A check or other demand item which is accompanied by special instructions, such as a request for special advice of payment or dishonor.

(13) "Nonlocal Originating Depository Institution" means any originating depository institution which is not a local depository institution.

(14) "Proprietary ATM" means an automated teller machine which is owned by, operated exclusively for, or operated by the receiving depository institution.

(15) "New Depositor" means any person that opens a new account in a depository institution if such person does not already have an account with such depository institution, and has not had an account with such depository institution within the preceding thirty (30) calendar days.

(16) "Nonproprietary ATM" means an automated teller machine which is not a proprietary ATM.

(17) "Originating Depository Institution" means the office of a depository institution on which a check is drawn.

(18) "Participant" means a depository institution which is located in the same geographic area as that served by a check clearinghouse association and which exchanges checks through such association, either directly or through an intermediary.

(19) "Receiving Depository Institution" means the office of a depository institution or the proprietary ATM in which a check is first deposited.

(20) "Teller's Check" means a traveler's check issued by a depository institution and drawn on another depository institution.

(21) "Traveler's Check" means any check which is endorsed with recourse only by the purchaser.

(22) "Unit of General Local Government" means any city, county, town, township, or other general purpose political subdivision of the State of Oregon.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 705

Stats. Implemented: ORS 705.600 & 708.508

Hist.: FCS 11-1987(Temp), f. 12-4-87, ef. 1-1-88; FCS 13-1988, f. & cert. ef. 9-2-88; Renumbered from 805-065-0005; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

**441-650-0010****Funds Availability Schedules****(1) Next business day availability for certain deposits:**

(a) Cash deposits, wire transfers. Except as provided in OAR 441-650-0020(4), where any cash is deposited in an account at a receiving depository institution or where funds are received by a receiving depository institution or where funds are received by a depository institution by wire transfer for deposit in an account at such institution, such funds shall be available for withdrawal not later than the business day after the business day on which such cash or funds are received;

(b) Government checks, certain other checks. Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of:

(A) A check drawn on the United States and endorsed with recourse only by the person to whom it was issued and deposited in an account of the person to whom the check was issued; and

(B) A check drawn by the State of Oregon, deposited in a receiving depository institution with a deposit slip indicating it is a check drawn on the State of Oregon, provided that the check is endorsed with recourse only by the person to whom it was issued and deposited in an account of the person to whom the check was issued; and

(C) A check drawn by a unit of general local government, deposited in a receiving depository institution with a deposit slip indicating it is a check drawn by a unit of general local government, provided the check is endorsed with recourse only by the person to whom it was issued, and deposited in an account of the person to whom the check was issued; and

(D) A check deposited in an office of a depository institution and drawn on the same or another office of such institution, if both offices are located in Oregon or in the same check processing region, the check is endorsed with recourse only by the person to whom it was issued and is deposited to an account of the person to whom the check was issued; and

(E) Any depository check which is deposited in a receiving depository institution with a deposit slip indicating that it is a cashier's, certified, teller's or depository check, provided the check is endorsed with recourse only by the person to whom it was issued and deposited in an account of the person to whom the check was issued; or

(F) The first \$100 deposited by check or checks on any one business day.

**(2) Availability of local checks:**

(a) In general. Subject to subsection (b) of this section, subsection (1)(b) and section (4) of this rule, and OAR 441-650-0020, funds which are deposited in an account in a depository institution by a check drawn on a local originating depository institution shall be available for withdrawal not later than the third business day after the business day on which the funds are deposited;

**(b) Time period adjustment for cash withdrawal of certain checks:**

(A) Except as provided in paragraph (B) of this subsection, funds deposited in an account in a depository institution by check drawn on a local depository institution that is not a participant in the same check clearinghouse association as the receiving depository institution (other than a check described in subsection (1)(b) of this rule) shall be available for cash withdrawal not later than the business day after the business day on which such funds otherwise are available under subsection (a) of this section;

(B) Not more than \$400 (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than \$400) of funds deposited by one or more checks to which this paragraph applies shall be

available for cash withdrawal not later than 5 o'clock post meridian of the business day on which such funds are available under subsection (a) of this section;

(C) Any amount available for withdrawal under this paragraph shall be in addition to the amount available under section (1)(b)(D) of this rule.

(3) Availability of nonlocal checks. Subject to subsection (1)(b) and section (4) of this rule and to OAR 441-650-0020, funds which are deposited in an account in a depository institution by a check drawn on a nonlocal originating depository institution shall be available for withdrawal not later than the seventh business day after the business day on which the funds are deposited.

(4) Deposits at an ATM:

(a) Nonproprietary ATM. Funds which are deposited at a nonproprietary automated teller machine for deposit in an account at a depository institution shall be available for withdrawal not later than the twelfth business day after the business day on which the funds are deposited;

(b) Proprietary ATM. The provisions of sections (1), (2) and (3) of this rule shall apply with respect to any funds deposited at a proprietary automated teller machine for deposit in an account at a depository institution.

(5) No provision of this rule shall be construed as requiring that, with respect to all checks deposited in a receiving depository institution:

(a) Such checks be physically returned to such depository institution; or

(b) Any notice of nonpayment of such check be given to such depository institution within the times set forth in section (1), (2), (3) or (4) of this rule.

Stat. Auth.: ORS Ch. 705

Stats. Implemented: ORS 705.600 & 708.508

Hist.: FCS 11-1987(Temp), f. 12-4-87, ef. 1-1-88; FCS 13-1988, f. & cert. ef. 9-2-88; Renumbered from 805-065-0010; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

## **441-650-0020**

### **Safeguard Exceptions**

(1) New accounts. Notwithstanding OAR 441-650-0010, in the case of any new account established at a depository institution by a new depositor, the following provisions shall apply with respect to any deposit in such account during the 30-day period beginning on the date the first such account is established:

(a) Next day availability of cash and certain items. Except as provided in subsection (c) of this section, in the case of cash deposits, deposits by wire transfer, deposits by depository check, or government check described in section (1)(b) (A), (B), (C) or (E) of OAR 441-650-0010, or by traveler's check, such cash or funds shall be available for withdrawal on the business day after the business day on which such cash or funds are deposited, or in the case of a wire transfer, on the business day after the business day on which such funds are received for deposit.

(b) Availability of other items. In the case of any funds deposited in such account by a check other than a check described in subsection (a) of this section, the availability of withdrawal shall not be subject to the provisions of sections (2), (3) or (4) of OAR 441-650-0010.

(c) Limitation relating to certain checks in excess of \$3,000. In the case of funds deposited in such account during the

30-day period described in section (1) of this rule, by checks described in section (1)(a) of this rule, the aggregate amount of which exceeds \$3,000, section (1)(a) of this rule shall apply only with respect to the first \$3,000 of such aggregate amount, and any excess over the \$3,000 shall be available for withdrawal not later than the ninth business day after the business day on which such funds are deposited.

(2) Large or redeposited checks; repeated overdrafts:

(a) In the case of funds deposited by one or more checks (other than checks described in OAR 441-650-0010(1)(b)) that in the aggregate exceed \$3,000 in any one day, the time limitations established under OAR 441-650-0010(2), (3) and (4) shall apply only with respect to the first \$3,000 of such aggregate amount. Any excess over the \$3,000 shall be available for withdrawal not later than the ninth business day after the business day on which such funds are deposited.

(b) The time limitations established under OAR 441-650-0010(2), (3) and (4) shall not be applicable to:

(A) Any checks (other than checks described in OAR 441-650-0010(1)(b)) that have been returned unpaid and redeposited; or

(B) Deposit accounts that have been overdrawn repeatedly.

(3) Reasonable cause exception:

(a) In general. OAR 441-650-0010(1)(b)(E), (2), (3) and (4) shall not apply with respect to any check deposited in an account at a depository institution if the receiving depository institution has reasonable cause to believe that the check is uncollectible from the originating depository institution. For purposes of the preceding sentence, "reasonable cause to believe" requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. Such reasons shall be included in the notice required under section (6) of this rule;

(b) Determination. No determination under this subsection may be based on any class of checks or person;

(c) Overdraft fees. If the receiving depository institution determines that a check deposited in an account is a check described in subsection (a) of this section, the receiving depository institution shall not assess any fee for any subsequent overdraft with respect to such account if:

(A) The depositor was not provided with the written notice required under section (6) of this rule (with respect to such determination) at the time the deposit was made; and

(B) The overdraft would not have occurred but for the fact that the funds so deposited are not available; and

(C) The amount of the check is collected from the originating depository institution.

(d) Each depository institution shall retain a record of each notice provided under section (6) of this rule as a result of the application of this section (3). Such record shall be retained for a period of not less than twelve months after the notice is given.

(4) Emergency conditions. OAR 441-650-0010(2), (3) and (4) shall not apply to funds deposited by check in any receiving depository institution in the case of:

(a) Any interruption of communication facilities;

(b) Suspension of payments by another depository institution;

(c) Any war; or

(d) Any emergency condition beyond the control of the receiving depository institution, if the receiving depository institution exercises such diligence as the circumstances require.

(5) Exception by agreement. Nothing in these rules shall be deemed to prohibit a depository institution and its customer from agreeing to a longer period than that specified in these rules for making deposited funds available for withdrawal, where the agreement:

- (a) Is based upon special circumstances;
- (b) Is not contained in a preprinted form; and
- (c) Is only entered into by the depository institution in special circumstances.

(6) Notice of exception; availability within reasonable time:

(a) If any exception contained in this rule (other than section (1) of this rule) is applied with respect to funds deposited in an account:

(A) The institution shall provide notice as set forth in subsection (b) of this section of the day the funds shall be made available and the reason the exception was invoked; and

(B) Except where other time periods are specifically provided in these rules, the availability of the funds deposited shall be governed by the policy of the receiving depository institution, but shall not exceed a reasonable period of time.

(b) The notice required under subsection (a) of this section shall be made:

(A) Immediately in writing to the depositor if the deposit was tendered in person by the depositor to an employe of the depository institution at the receiving depository institution;

(B) By mail to the depositor within two business days after the cessation of the emergency condition, where the deposit is one to which section (4) of this rule applies;

(C) By mail to the depositor not later than the close of the business day following the business day on which the deposit is received, in the case of any deposit to which paragraphs (A) and (B) of this subsection do not apply.

(c) If the facts on which the determination of the applicability of an exception contained in section (2) or (3) of this rule to any deposit only become known to the receiving depository institution after the time notice is required under subsection (b) of this section with respect to such deposit, the depository institution shall mail such notice to the depositor as soon as practicable, but not later than the first business day following the day such facts become known.

Stat. Auth.: ORS Ch. 705

Stats. Implemented: ORS 705.600 & 708.508

Hist.: FCS 11-1987(Temp), f. 12-4-87, ef. 1-1-88; FCS 13-1988, f. & cert. ef. 9-2-88; Renumbered from 805-065-0020; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

## **441-650-0030**

### **Disclosure of Funds Availability Information**

(1) Each depository institution shall disclose in writing to each person who has an account with the institution the funds availability schedules contained in these rules, as the same are in effect on the date the disclosure is made. The disclosure shall be in substantially the form set out at in **Exhibit 1**.

(2) In the case of persons who have an account with the depository institution prior to January 1, 1988, and who continue to hold such account on or after January 1, 1988, the disclosure required by this section shall be made not later

than January 30, 1988.

(3) In the case of persons who establish an account with the depository institution on or after January 1, 1988, the disclosure required by this section shall be made to the person prior to the opening of the account.

(4) Every depository institution shall post or provide in a conspicuous location in its principal place of business and at each branch office a notice setting forth the funds availability schedules contained in these rules.

[ED NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 705

Stats. Implemented: ORS 705.600 & 708.508

Hist.: FCS 11-1987(Temp), f. 12-4-87, ef. 1-1-88; FCS 13-1988, f. & cert. ef. 9-2-88; Renumbered from 805-065-0030; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

## **441-650-0040**

### **Miscellaneous Provisions**

(1) After hours deposits. For purposes of these rules, any deposit which is made on a Saturday, Sunday, legal holiday, or after the close of business on any business day shall be deemed to have been made on the next business day.

(2) Availability at start of business day. Except as provided in OAR 441-650-0010(2)(b), if any provision of these rules requires that funds be available for withdrawal on any business day, such funds shall be available for withdrawal at the start of such business day.

(3) Effect on policies of depository institutions. Nothing in these rules shall be construed as:

(a) Prohibiting a depository institution from making funds available for withdrawal in a shorter period of time than the period of time required by this title; or

(b) Affecting a depository institution's right:

(A) To accept or reject a check for deposit;

(B) To revoke any provisional settlement made by the depository institution with respect to a check accepted by such institution for deposit;

(C) To charge back the depositor's account for the amount of such check; or

(D) To claim a refund of such provisional credit.

(4) Prohibition of freezing certain funds in an account. In any case in which a check is deposited in an account at a depository institution and the funds represented by such check are not yet available for withdrawal pursuant to this title, the depository institution may not freeze any other funds in such account (which are otherwise available for withdrawal pursuant to these rules) solely because the funds so deposited are not yet available for withdrawal.

(5) Bona fide errors. A depository institution may not be held liable for a violation of these rules if the depository institution demonstrates that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of bona fide errors include but are not limited to clerical, calculation, computer malfunction and programming and printing errors.

Stat. Auth.: ORS Ch. 705

Stats. Implemented: ORS 705.600 & 708.508

Hist.: FCS 11-1987(Temp), f. 12-4-87, ef. 1-1-88; FCS 13-1988, f. & cert. ef. 9-2-88; Renumbered from 805-650-0040; Suspended by FCS 3-1997(Temp), f. & cert. ef. 10-6-97

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 700**

**SAVINGS AND LOAN, CREDIT UNION, AND  
CONSUMER FINANCE SECTION**

**General**

**441-700-0000**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure effective September 26, 1983 are adopted as the Rules of Procedure for the Savings and Loan, Credit Union and Consumer Finance Section of the Finance and Corporate Securities Division.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.341

Hist.: FID 4-1985, f. & ef. 11-20-85; Renumbered from 805-070-0005

**441-700-0010**

**Notice of Intended Rulemaking**

Prior to the adoption, amendment, or repeal of any rule, the Director of the Finance Section will give notice of the proposed adoption, amendment, or repeal:

(1) By causing notice of the proposed action to be published at least once, in the Secretary of State's Bulletin referred to

in ORS 183.360, at least 15 days prior to the effective date of the action.

(2) By mailing copies of the notice:

(a) To persons on the Director's mailing list established pursuant to ORS 183.335(7);

(b) To the United Press International and the Associated Press.

(3) By mailing copies of the notice to persons that may have an interest in the subject matter of the proposal and organizations and publications that may provide notice to persons who may have an interest, such as the following:

(a) When the rules are proposed under ORS Chapter 722, to the Oregon Financial Institutions League, to all savings associations doing business in this state and to persons whose applications are pending under ORS Chapter 722;

(b) When the rules are proposed under ORS Chapter 723, to the Oregon Credit Union League, to all credit unions doing business in this state and to persons whose applications are pending under ORS Chapter 723;

(c) When the rules are proposed under ORS Chapter 725, to the Consumer Finance Association, to all consumer finance companies doing business in this state and to persons whose applications are pending under ORS Chapter 725.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.335

Hist.: FID 1-1986, f. & ef. 1-3-86; Renumbered from 805-070-0010

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**Oregon Administrative Rules  
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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 710**

**CREDIT UNIONS (IN GENERAL)**

**441-710-0000**

**Definitions**

As used in Oregon Administrative Rules Chapter 441, Divisions 710 and 720, unless the context requires otherwise:

- (1) "Credit union" has the meaning given the term by ORS 723.006.
- (2) "Director" and "capital" have the meaning given those terms by ORS 723.001.
- (3) "CUSO" or "credit union service organization" means an agency, association or corporation in which a credit union is authorized by ORS 723.602(5) to invest or to which it is authorized by ORS 723.602(5) to loan funds.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.006

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0005

**441-710-0010**

**Fees and Charges Credit Unions Pay the Director**

- (1) Effective February 15, 1994, the annual regulatory fee under ORS 723.114(1), which is due and payable on March 1 of each calendar year, by each credit union, with assets of:
  - (a) Less than \$10 million, is \$300 plus .0001920 of all assets;
  - (b) Less than \$50 million, is \$1,080 plus .0001140 of all assets;
  - (c) Less than \$100 million, is \$1,180 plus .0001120 of all assets;

(d) \$100 million or more, is \$5,480 plus .0000690 of all assets.

(2) The rate of charge payable by a credit union is \$60 an hour for each examiner used in an examination for extra services provided a credit union under ORS 723.114(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the Supervisor is required to travel out of state for an examination or to provide extra service, the rate of charge payable by the credit union is \$60 an hour per person, plus actual expenses for travel and subsistence;

(b) If the examination or the extra service is performed by a consultant hired by contract for the particular work, the charge payable by the credit union is the actual cost to the division of the contract consultant.

(4) In addition to the charges fixed by sections (2) and (3) of this rule, the Director will collect from a credit union any additional costs directly attributable to extra services given the credit union under ORS 723.114(2).

(5) As used in this rule:

(a) "Assets" means the average value of total assets reported by the credit union for the four calendar quarters ending with the quarter immediately preceding the due date of the fee. However, if a credit union was not in existence or doing business in this state during all of the prior calendar year, "assets" means the average assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee;

(b) "Extra service" means any attention other than a regular or special examination.

(6) The annual regulatory fee of a credit union that is party to a merger or conversion, or is liquidated or dissolved:

(a) Is not subject to refund in whole or in part if the merger, conversion, liquidation or dissolution occurs prior to the end of the calendar year for which a fee has been paid;

(b) Is not subject to proration if the credit union operated during any part of the calendar year during which the merger, conversion, liquidation or dissolution occurred.

Stat. Auth.: ORS 723.102 & 723.114

Stats. Implemented: ORS 723.114

Hist.: FID 9-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-072-0010; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1991, f. 1-28-91, cert. ef. 2-15-91; FCS 3-1994, f. 2-1-94, cert. ef. 2-15-94; Administrative correction 9-29-97

## **441-710-0015**

### **Amendment and Late Charge Fees**

(1) The fees for amendments authorized by ORS 723.022 are as follows for each submission:

(a) Amendment of articles of incorporation, \$25;

(b) Amendment by bylaws, \$25.

(2) The following charges apply to late reports filed by the credit union with the director. The fine is for each day the report is late:

- (a) Quarterly call reports; \$100;
- (b) Supervisory Committee Report, \$10;
- (c) Examination report reply, \$10;
- (d) Monthly reports when required by the director, \$10. The reports may include, but are not limited to:
  - (A) Financial statement, including income and expenses;
  - (B) Board of Director minutes.

Stat. Auth.: ORS 723.022 & 723.106

Stats. Implemented: ORS 723.022 & 723.106

Hist.: FCS 5-1991(Temp), f. & cert. ef. 9-30-91; FCS 6-1991, f. 10-29-91, cert. ef. 11-1-91

## **Membership**

### **441-710-0020**

#### **Membership in General**

The rules in this section adopt definitions, adopt federal statutes and rules on membership, and create procedures for expanding the membership of a credit union. The interpretations in this rule do not invalidate or change the field of membership of any credit union approved prior to November 7, 1988.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0050

### **441-710-0030**

#### **Definitions**

As used in this section:

- (1) "State FOM", means a field of membership that is authorized by state law, ORS Chapter 723. A state FOM may consist of a common bond based on occupation or association.
- (2) "Tie-in FOM" means a field of membership authorized under federal law and is adopted by the rules in this section for state chartered credit unions. A tie-in FOM may consist of multiple common bonds based on occupation, association or community. A common bond based on residence will be recognized only on a case by case basis primarily for the purpose of accommodating a merger or purchase of assets or receivables.
- (3) "Members of the immediate family" includes all of the following relatives: grandparents, parents, spouse, children, stepchildren, grand-children, brothers, sisters, half-brothers, half-sisters, aunts and uncles and spouses of any of these persons.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0055

#### **441-710-0040**

##### **Creation of Classifications**

There are created the following classifications of membership:

- (1) State FOM: A classification of membership known as a "State FOM".
- (2) Tie-In FOM: A classification of membership known as a "Tie-in FOM".

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0060

#### **441-710-0050**

##### **Adoption of Federal Statutes and Rules on Membership**

A state credit union may follow the definition of "membership" and the procedures concerning field of membership that federal credit unions can do under the following provisions in effect on November 7, 1988.

- (1) Federal Credit Union Act, section 109, 12 USC 1759.
- (2) NCUA Interpretive Ruling and Policy Statement 84-1, dated December 3, 1984, which deals with membership in federal credit unions.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0065

#### **441-710-0060**

##### **Procedures for Expanding Membership**

The following procedures are made applicable to expansions of membership:

- (1) Selection of State FOM: Each credit union may designate one field of membership as its "state FOM":
  - (a) Employer groups or individuals who clearly fit within the state FOM can be added as members without having to amend the field of membership;

(b) The original designated main field of membership chosen as the state FOM may be amended but it cannot be changed.

(2) Selection of tie-in FOM: All other fields of membership shall be designated as "tie-in FOMs":

(a) Where the tie-in FOM is occupational, new employment groups can only be added by amending the tie-in FOMs using procedures similar to that followed by the federal credit unions;

(b) Where the tie-in FOM is an associational field of membership, no amendments are necessary to add individual association members to that field.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0070

## **441-710-0070**

### **Procedures for Amending Bylaws on Tie-In Field of Membership**

(1) When a credit union wishes to expand its tie-in FOM, it shall amend its bylaws to describe the group or groups to be added to the membership. The proposed amendment to the bylaws and the application for approval of the amendment filed with the Director shall include:

(a) The bylaw that defines the field of membership of the credit union with the text of the proposed amendment to the bylaw showing the new language underlined and deleted language, if any, bracketed;

(b) The credit union's ethics policy regarding seeking or accepting members or groups already served by another state or federal credit union;

(c) The credit union's most recent financial statement;

(d) An updated plan of business for the credit union that takes into account the implications of the anticipated increased membership, deposits, responsibilities and effect on capital level of the credit union;

(e) An updated budget;

(f) If the amendment proposes to add a separate employment group to the field of membership, the names and addresses of individuals who represent the group;

(g) A statement of whether there are other credit unions serving the group to be added or if there are no potential overlap issues;

(h) Any other evidence in support of the application, including from the group to be added.

(2) Any requirement in section (1) of this rule may be waived by the Director if the requirement is not necessary for the purposes of that application.

(3) Where an application for amendment of the field of membership overlaps the field of another state or federal credit union, the application shall additionally:

(a) Include the names and addresses of each credit union presently serving the group, the penetration of those credit unions into the group, and the quality and quantity of services being provided by those credit unions to the extent

known;

(b) Furnish evidence of support from the affected groups including a justification of why the group no longer desires the eligibility or continued service from the overlapped credit union, if that is the case.

(4) If the approval of an amendment would knowingly create an overlap issue with any other credit union, the Director will give notice of the application and the proposed amendment of the bylaws to the potentially affected state and federally chartered credit unions in this state. The notice will offer all such credit unions a reasonable opportunity:

(a) To review the application, except for any confidential information included in the application; and

(b) To comment to the Director in writing on the contemplated overlap.

(5) If the Director finds a group is not being satisfactorily serviced, the approval may be withdrawn.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0075

## **Supervision and Regulation**

### **441-710-0080**

#### **Annual Audit; Qualified Persons to Perform; Content; Time for Filing, Reporting Action Taken**

(1) The person performing the comprehensive annual audit required by ORS 723.322 must be qualified by knowledge and experience to perform credit union audits and must be approved by the Director as so qualified.

(2) The audit should test whether or not the accounting systems and methods used by the credit union, and the accounts of the credit union, accurately reflect the condition of the business. The auditor shall prepare the audit report in accordance with the guidelines furnished by the Director. The audit report shall include a management letter; and the management letter shall include, but need not be limited to:

(a) An evaluation of the soundness of the credit union;

(b) An evaluation of its internal controls;

(c) The state of its compliance with applicable statutes and rules; and

(d) An evaluation of the extent and effectiveness of its use of generally accepted accounting principles.

(3) A copy of the audit, including the management letter, shall be filed with the Director by the auditor within 30 days after the report is delivered to the credit union. Within 65 days after the audit report is received by the credit union, the credit union shall report to the Director the action it has taken or is taking in response to the report.

(4) This rule shall apply to audits conducted on or after January 1, 1983.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.322

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0150

#### **441-710-0090**

##### **Required "Additional Reports" Defined**

(1) As used in ORS 723.106(1), "additional reports" includes call reports of condition, lists of officers and other management officials, Supervisory committee audits, management letters, liquidity reserve reports, and other reports required by the Director.

(2) If a credit union is investing in or has loans outstanding to a CUSO, "additional reports" as used in ORS 723.106(1) includes reports and other information of the CUSO of the kinds described by section (1) of this rule.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.106(1)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0155

#### **441-710-0100**

##### **Reports and Filings When Credit Union Invests in CUSO**

(1) When a credit union invests in or loans funds to a CUSO, the credit union shall, within 30 days after the funds are first invested or loaned, file with the Director a copy of:

- (a) The charter, articles of association or incorporation, or partnership agreement, of the CUSO; and
- (b) The bylaws of the CUSO.

(2) Any amendments of the documents described by section (1) of this rule shall be filed with the Director by the credit union within 30 days after the amendment becomes effective.

(3) When a credit union invests in or loans funds to a CUSO, the credit union shall file with the Director a copy of the most recent financial statement of the CUSO. The statement shall be filed within 30 days after the first funds are invested in or loaned to the CUSO. While a credit union has funds invested in or loaned to a CUSO, the credit union shall each year file the annual financial statement of the CUSO with the Director within 30 days after the statement is issued.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.106 & 723.602(5)

Hist.: BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0156

#### **441-710-0110**

##### **Duty to Report Changes in Accounting Systems, Methods or Procedures**

(1) A credit union shall report to the Director any major change in bookkeeping or accounting systems, methods and procedures at least 60 days prior to implementation of the change to permit the Director to schedule examinations

appropriately.

(2) Any contract or agreement by a credit union to purchase accounting services shall include a clause acknowledging the right of the Director or authorized representatives to examine any and all records of the credit union on the premises of the servicer.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.116(1) & 723.152(20)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0160

## **441-710-0120**

### **Accrual Accounts, When Required**

Each credit union with assets in excess of \$5 million shall use accrual accounting.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.116(1)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0165

## **441-710-0130**

### **Dormant Account Controls**

(1) A credit union shall segregate all dormant accounts and place them under separate supervisory control as they are found to be dormant. An account is considered dormant if, for more than one year:

(a) The credit union has been unable to contact the member or other person described by ORS 723.457 with an interest in the account; or

(b) The member or other person has not contacted the credit union in any of the ways described by ORS 98.308(1). A credit union is "unable to contact" such an individual, as the term is used in this rule, if a letter sent first class mail, addressed to the last known address of the individual as shown on the records of the credit union, is returned undelivered.

(2) A credit union shall maintain dormant accounts under supervisory control requiring two people to authenticate each entry. A credit union with only one employee may use a single supervisory control requiring only one person to authenticate each entry; but in such a case, the dormant accounts shall be reviewed monthly by a representative of the supervisory committee.

(3) A credit union shall cause its dormant accounts to be certified monthly.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.116 & 723.457

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0170

**441-710-0140****Back-Up Records; Off-Site Storage Required**

(1) To insure the viability and reasonable continuity of the credit union in the event of a catastrophe that would destroy or make its records at the place of business useless, every credit union shall store off-site records that could be used to reconstruct the credit union's records in case of a catastrophe. The credit union shall, at the credit union, maintain a log of the records stored off-site.

(2) The adequacy of the plan of each credit union for complying with this rule is subject to the approval of the Director. Each credit union shall submit its plan, and any major revision of its plan, to the Director for approval. The submission shall identify the kinds of records to be stored off-site, the procedure used to collect the records and to transport them to storage, and the place where stored.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.116(1)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0175

**Federal Tie-In Rules****441-710-0160****Purpose, Authority for Federal Tie-In Rules**

ORS 723.156 authorizes the Director to grant to state chartered credit unions powers federally chartered credit unions have notwithstanding state law, if it would serve the public convenience and advantage, and equalize and maintain the quality of competition between state chartered credit unions and federally chartered credit unions. The tie-in rules hereafter adopted are done pursuant to ORS 723.156.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0250

**441-710-0170****Definitions When Applying Tie-In Federal Statutes, Rules and Regulations**

In applying the federal statute, regulations and interpretive rulings and policy statements referred to in the tie-in statutes granting federal powers to state credit unions, unless the context requires otherwise:

- (1) "Federal Credit Union" and "FCU" mean state credit union.
- (2) "National Credit Union Administration", "NCUA" and "Board" mean the Director.
- (3) "State Credit Union" means a credit union chartered under the laws of this state.
- (4) "Section 107(8) Institution" has the meaning given that term by **12 CFR 703.2(n)**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156 & 723.602(8)

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0255

## **Investments**

### **441-710-0180**

#### **Procedures Required Prior to Exercise of Certain Investment Powers**

(1) A credit union shall not exercise the investment powers granted credit unions by OAR 441-710-0190 and 441-710-0200, unless it first adopts investment procedures and policies covering the type of investment programs it intends to engage in.

(2) The investment policies and procedures shall:

(a) Describe the particular type of investment it intends to engage in, summarize the procedures and policies developed for each program and describe investment objectives for the program;

(b) Name the person who will do the investing and any professionals who will be used as adviser; and

(c) Show the ability and training of the person that qualifies the person to do the investing.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156 & 723.602(8)

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0260

### **441-710-0190**

#### **Investments in Repurchase and Reverse Repurchase Agreements, Bankers Acceptances, Participation in Federal Funds Authorized; Adoption of Federal Statutes, Regulations on Such Investments**

A state credit union is authorized to exercise the powers to invest in repurchase and reverse repurchase agreements, bankers acceptances and in federal funds similar to those powers allowed to federal credit unions in the following provisions in effect on August 1, 1986.

(1) Federal Credit Union Act 107(7) and (8) (**12 U.S.C. 1757(7) and (8)**);

(2) **12 CFR 703.2(c), (g), (l), (m) and (n)**; and

(3) **12 CFR 703.3(d), (e), (f), (g) and (i)**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156 & 723.602(8)

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0265

#### **441-710-0200**

##### **Adoption of Federal Statutes, Rulings, Policy Regarding Mortgage Assumptions**

(1)(a) A state credit union is authorized to exercise the powers to allow nonmembers to assume real estate mortgages of members conferred on a federally chartered credit union by Section 107(5)(A)(i) of the Federal Credit Union Act (**12 U.S.C. 1757(5)(A)(i)**) in effect on August 1, 1986;

(b) NCUA Interpretive Ruling and Policy Statement Number 85-3, effective December 12, 1985, entitled "Assumption of Real Estate Loans by Nonmembers" is adopted and made applicable to the grant of authority made by this rule.

(2) In applying the federal statute, and the rulings and policy adopted by section (1) of this rule, unless the context requires otherwise, "section 107(5)(A)(i) of the Federal Credit Union Act (**12 U.S.C. 1757 (5)(A)(i)**)" means ORS 723.502.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156 & 723.602(8)

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0270

#### **441-710-0210**

##### **Adoption of Federal Statutes, Regulations, Rulings, Policy Regarding Trustees and Custodians of Pension Plans**

(1)(a) A state credit union is authorized to exercise the powers of offering self-directed IRA accounts to members conferred on a federally chartered credit union by **12 U.S.C. 1787(c)(3)**, and **12 CFR 724.1** and **12 CFR 724.2**; and

(b) NCUA Interpretive Ruling and Policy Statement Number 85-1 effective November 14, 1985, entitled "Trustees and Custodians of Pension Plans" is adopted and made applicable to the grant of authority made by this rule.

(2) In applying the federal statute, regulations, and rulings and policy adopted by section (1) of this rule, unless the context requires otherwise, "**12 U.S.C. 1787(c)(3)**", "**12 CFR 724.1**" and "**12 CFR 724.2**" mean ORS 723.152(22).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(22) & 723.156

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0275

**441-710-0220****Adoption of Federal Statutes and Regulations Concerning Loan Participations**

(1) Federal Tie-In: A state credit union is authorized to follow the procedures concerning loan participations that federal credit unions can do under the following provisions in effect on November 1, 1987:

(a) The Federal Credit Union Act, **12 U.S.C. 1757(5)(E)**;

(b) **12 CFR 701.22**.

(2) Additional State Requirements: In addition to the requirements of the federal laws and rules a state credit union:

(a) Must file with the Division of Finance and Corporate Securities:

(A) A representation that the board of directors has adopted written policies and procedures concerning loan participations;

(B) An undertaking that it will not keep or acquire any loan participation interest which exceeds the loan to one borrower requirements in ORS 723.512 and, except for this provision, will follow the guidelines for loan participations in **12CFR 701.22**;

(C) An undertaking that it will not be an orig-inating lender in a loan under this rule having a recourse, repurchase or subparticipation provision;

(D) An undertaking that each loan agreement will contain a provision that provides complete access to the agency to all records of each participant concerning the loan transaction.

(b) Any provision of subsection (a) of this section except paragraph (a)(B) of this section may be waived or modified by order of the Director if undue risk is created by the waiver or modification and that the credit union has policies, procedures, and strategies covering the changed items or where it is necessary for regulatory purposes.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: FCS 10-1987, f. 11-13-87, ef. 12-1-87; Renumbered from 805-072-0280

**441-710-0230****Purposes of a Credit Union**

The purposes of a credit union described by ORS 723.006 include, but are not limited to:

(1) Family financial services, such as financial planning and counseling, estate planning and income tax preparation, developing and administering IRA and Keogh plans and other personal benefit plans.

(2) Personal property leasing and development of leasing plans under cooperative marketing agreements authorized by ORS 723.586.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.006 & 723.586

Hist.: BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0300

## **Powers**

### **441-710-0240**

#### **Limitations on Ownership of Fixed Assets**

Under ORS 723.152(4), a credit union has the power to acquire, lease, hold and dispose of property necessary or incidental to its operations. A credit union's ownership of fixed assets is limited as described by OAR 441-710-0240 to 441-710-0280.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(4)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0305

### **441-710-0250**

#### **Ownership of Fixed Assets; Definitions**

As used in OAR 441-710-0240 to 441-710-0280:

- (1) "Premises" includes any office, branch office, service center, parking lot, other facility or real estate where the credit union transacts or will transact business.
- (2) "Furniture, fixtures and equipment" includes all office furnishings (e.g., tables, chairs, desks, file cabinets, curtains, drapes, rugs, etc.), office machines, computer hardware and software, automated terminals, heating and cooling equipment.
- (3) "Fixed assets" means premises and furniture, fixtures and equipment.
- (4) "Investment in fixed assets" means:
  - (a) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;
  - (b) Any leasehold improvement on premises;
  - (c) The aggregate of the lease payments pursuant to a lease agreement on fixed assets;
  - (d) Any investment in the bonds, stock, debentures or other obligations of a partnership or corporation holding any fixed assets used by the credit union and any loans to such partnership or corporation, when the partnership or corporation is exclusively owned by the credit union or two or more credit unions; or
  - (e) Any investment in furniture, fixtures and equipment.
- (5) "Abandoned premises" means former credit union premises from the date of relocation to new quarters, and property

originally acquired for future expansion for which such use is no longer contemplated.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(4)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0310

## **441-710-0260**

### **Investment in Fixed Assets**

(1) A credit union shall not, without the prior approval of the Director, invest in fixed assets if the aggregate of all such investments exceeds five percent of assets.

(2) A credit union shall submit such statements and reports as the Director may require in support of a request for approval of an investment in fixed assets in excess of the limit specified by section (1) of this rule. Such reports and statements shall include, but need not be limited to:

(a) A narrative, describing the proposal in terms of costs, usage, location and method of financing;

(b) Current financial data; and

(c) A pro forma projected balance sheet and statements of income and expenses for each of the ensuing three years based upon the assumption that the proposal will be approved.

(3) If the Director determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will be approved for investment in fixed assets.

(4) A credit union that has investments in fixed assets in excess of five percent of its assets as of the effective date of this rule may honor existing, firm commitments to acquire fixed assets without the Director's approval. However, the credit unions must notify the Director of the existence of such commitments within 30 days after the effective date of this rule.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(4)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0315

## **441-710-0270**

### **Investment in Premises**

(1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed three years unless otherwise approved in writing by the Director. After real property acquired for future expansion has been held for one year, a board resolution with definitive plans for utilization must be available for inspection by the Division of Finance and Corporate Securities examiners.

(2) Investments in premises will be recorded on the credit union's books in accordance with generally accepted accounting principles. The cost of land shall be carried on the books of the credit union in an account separate from the cost of improvements thereon.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(4)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0320

## **441-710-0300**

### **Sale of Eligible Obligations**

- (1) "Eligible obligations" means a loan or group of loans of a credit union's members or obligations purchased by the credit union.
- (2) An agreement to sell a partial interest in eligible obligations shall at a minimum:
  - (a) Identify the obligations covered by the agreement;
  - (b) Provide for the collection, processing and remittance of payments of principal and interest, late charges, service charges and escrow accounts (if required);
  - (c) Disclose the responsibilities of each party in the event an eligible obligation becomes subject to collection, loss or foreclosure;
  - (d) Provide that in the event of loss, each owner shall share in the loss in proportion to its interest in the obligation at the time of the loss;
  - (e) Provide for the distribution of payments of principal to each owner in proportion to its interest in the eligible obligation;
  - (f) Provide for loan status reports by the lead institution; and
  - (g) State the terms and conditions under which the agreement may be terminated or modified.
- (3) A sale of eligible obligations shall not include or be subject to recourse or repurchase provisions, except as provided in this section. The agreement may:
  - (a) Require the seller to repurchase an eligible obligation in case of a breach or alleged breach of warranty or misrepresentation of a party to the obligation;
  - (b) Allow the seller at its discretion to repurchase; and
  - (c) Allow substitution of one loan for another, at the discretion of the seller.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(10)

Hist.: BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-072-0350

## **441-710-0310**

### **Purposes of CUSOs**

A CUSO may be organized:

- (1) For one or more of the purposes described by ORS 723.006 and OAR 441-710-0230.
- (2) To provide credit union operational functions such as credit union service centers, credit card and debit card services, ATM services, accounting systems, data processing and management training and support.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.602(5)

Hist.: BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0370

## **441-710-0320**

### **CUSO Authorized to Act as Insurance Agent**

In addition to the purposes enumerated by OAR 441-710-0310, a CUSO may be organized to act as an agent for the sale of liability, casualty, automobile, life, health, accident, title and other insurance.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.602(5)

Hist.: BB 1-1984, f. & ef. 2-8-84; Renumbered from 805-072-0373

## **441-710-0325**

### **Housing Agency Low Income Rental Housing Fund Client Trust Accounts**

- (1) Every financial institution as defined in ORS 706.005, authorized by law to offer client trust accounts established pursuant to ORS 696.241 and to accept deposits to such accounts in Oregon may:
  - (a) Make available to its depositors, client trust accounts, hereafter designated as Housing Agency Low Income Rental Housing Fund Accounts ("Housing Fund Accounts"); and
  - (b) Pay interest on all funds deposited in each Housing Fund Account at the same rate payable on similar accounts.
- (2) Each Housing Fund Account shall be created and maintained according to written agreement between the financial institution and participating depositor. Each agreement shall authorize the financial institution to pay all interest earned, net of fees and expenses imposed by the financial institution, to the Housing Agency Low Income Rental Housing Fund designated in Chapter 916, Oregon Laws 1989.
- (3) Fees and Expenses:
  - (a) Each Housing Fund Account may be subject to fees and expenses which are reasonable and are customarily assessed by the financial institution for similar accounts;
  - (b) In no event shall a financial institution collect fees and expenses from a Housing Fund Account in excess of earned interest.

- (4) Interest Remittances and Reports:

(a) Each participating financial institution shall remit to the Housing Agency any interest earned on each Housing Fund Account, net of reasonable fees and expenses. Remittance, if any, shall be made at least quarterly;

(b) Remittance may be made in a single aggregate installment representing net interest payable from all Housing Fund Accounts maintained by the financial institution;

(c) Each participating financial institution shall report to the Housing Agency information as to every Housing Fund Account maintained by the financial institution. The information shall be in writing and include identity of the Housing Fund Account by name, account number, interest earned, fees and charges, and net interest remitted, if any. Reports shall be made at least quarterly and may accompany any remittances.

(5) If a financial institution is required to produce tax information returns (Form 1099), the financial institution shall designate the State of Oregon Housing Agency Low Income Rental Housing Fund, as payee or recipient. Tax identification information shall be provided by the Housing Agency to participating financial institutions upon request.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS 723.102

Hist.: FCS 8-1989, f. 12-14-89, cert. ef. 1-1-90

## Reserves

### 441-710-0330

#### Special Reserve Allocation Required

In addition to the reserve requirements of ORS 723.631, a state credit union shall establish and maintain a special reserve in accordance with ORS 723.646.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.646

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0450

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 720**

**CREDIT UNIONS (Share Drafts)**

**441-720-0000**

**Definitions**

As used in OAR 441-720-0000 to 441-720-0090:

- (1) "Bank", in the phrase "payable through bank", means a bank, as defined by ORS 71.2010, that has been designated to make presentment of a share draft to a credit union for payment.
- (2) "Truncation" means the original share draft is not returned to the member.
- (3) "Share Draft" and "Share Draft Account" have the meaning given those terms by ORS 723.434.
- (4) "Liquidity Reserve" means an allocation of current assets recorded on the credit union's records as cash or deposits and as investments authorized by ORS 723.602 that are redeemable within 60 days and have a maturity not in excess of 90 days.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.434

Hist.: BB 5-1978, f. 12-29-78, ef. 2-1-79; BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-073-0005

**441-720-0010**

**Share Draft Accounts**

- (1) Notwithstanding ORS 723.152(24) restricting share draft accounts to members who are individuals, a credit union may provide any of its members with share draft accounts as authorized by ORS 723.434.
- (2) This rule is adopted to carry out the authority in ORS 723.156 to conform the powers of state credit unions to the

powers conferred on federally chartered credit unions.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.152(24), 723.156 & 723.434

Hist.: BB 5-1978, f. 12-29-78, ef. 2-1-79; BB 4-1982, f. 8-24-82, ef. 9-1-82; Renumbered from 805-073-0010

## **441-720-0090**

### **Effective Date; Repeal**

- (1) OAR 441-720-0000 to 441-720-0090 are effective February 1, 1979.
- (2) OAR 441-720-0000 to 441-720-0080 are repealed whenever any of the following events occur:
  - (a) A federal law is enacted that denies federal credit unions the authority to provide share drafts;
  - (b) A federal administrative rule is adopted that denies federal credit unions the authority to provide share drafts;
  - (c) A court of law issues a decision that denies federal credit unions the authority to provide share drafts.
- (3) The repeal provided by section (2) of this rule is effective six months after the effective date of the statute or rule, or six months after the date the court decision becomes final.

Stat. Auth.: ORS Ch. 723

Stats. Implemented: ORS 723.156

Hist.: BB 5-1978, f. 12-29-78, ef. 2-2-79; Renumbered from 805-073-0045

## **Corporate Central Credit Union**

## **441-720-0100**

### **Scope and Application**

The scope and application of OAR 441-720-0110 through 441-720-0150 are intended to permit the Oregon chartered corporate central credit union to exercise certain powers conferred on federally chartered corporate credit unions under **12 CFR Part 704**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

**441-720-0110****Definitions**

The following definitions are adopted for the purposes of this Division:

- (1) "Average Daily Assets" means the daily average of net assets calculated on the basis of assets at the close of each day in the period.
- (2) "CLF" means Central Liquidity Facility.
- (3) "CMO" means Collateralized Mortgage Obligation.
- (4) "Capital" means the total of all corporate reserves (regular or statutory reserves, as applicable), all undivided earnings, net income, and membership capital share deposit (or equivalent) accounts.
- (5) "Equity Reserves", pursuant to ORS 723.730(1), means regular or statutory reserves, and all undivided earnings, which shall be used to finance expansion, pay dividends, absorb losses or be expended for any other bona fide corporate purpose.
- (6) "MCSD" means membership capital share deposit.
- (7) "Membership Capital Share Deposit" account means a share, deposit, or other account that:
  - (a) Is established, at a minimum, as a 12-month notice account;
  - (b) Is limited to members;
  - (c) Is not subject to share insurance coverage by the NCUSIF; and
  - (d) In the event of liquidation of the corporate central credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the NCUSIF. In any event, an MCSD account shall not be repayable until notice that the account holder credit union intends to withdraw MCSD account funds from the corporate central credit union, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged. MCSD accounts cannot be used to pledge borrowings. If the corporate central credit union issues MCSD accounts, it shall disclose, at least annually to its members, the terms and conditions under which such accounts are issued.
- (8) "NCUSIF" means the National Credit Union Share Insurance Fund.
- (9) "Net Assets" means total assets less CLF stock subscriptions, CLF loans guaranteed by the NCUSIF, U.S. Central CLF certificates, and member reverse repurchase transactions.
- (10) "Primary Capital" means all corporate reserves and undivided earnings.
- (11) "REMIC" means Real Estate Mortgage Investment Conduit.
- (12) "Risk-Based Capital" means the total of primary capital and secondary capital (up to 100 percent of primary capital).
- (13) "Risk-Weighted Assets" means the sum of total balance sheet assets and off-balance sheet credit equivalent amounts multiplied by their appropriate risk weights.
- (14) "SEC" means the Securities and Exchange Commission.
- (15) "Secondary Capital" means MCSD or equivalent accounts (except for MCSD accounts owned by other corporate

central credit unions unless the MCSD account is held by a corporate central credit union whose members are primarily other corporate central credit unions and other organizations recognized under **Section 501(c)(6)** of the **Internal Revenue Code**), allowance for loan and lease losses up to a maximum of 1.25 percent of risk-weighted assets, and term subordinated debt weighted by remaining maturity as indicated:

- (a) Five years or more until maturity: 100 percent;
  - (b) Four years to less than five years: 80 percent;
  - (c) Three years to less than four years: 60 percent;
  - (d) Two years to less than three years: 40 percent;
  - (e) One year to less than two years: 20 percent; and
  - (f) Less than one year remaining maturity: 0 percent. MCSD accounts upon which the accountholder has given the corporate central credit union notice of intent to withdraw may no longer be considered secondary capital.
- (16) "United States Government-Sponsored Corporations and Enterprises" means agencies originally established or chartered to serve public purposes specified by Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

## **441-720-0120**

### **Risk Weights and Risk Categories**

The following risk weights and risk categories are established for purposes of OAR Chapter 441, Division 720:

- (1) Category One. Zero Percent Risk Weight.
  - (a) Coin and currency on hand or physically in transit;
  - (b) Balances due from and claims on Federal Reserve Banks;
  - (c) Claims on and portions of claims that are unconditionally guaranteed by the United States Government or its agencies;
  - (d) Claims Collateralized by cash or eligible deposits;
  - (e) CLF subscriptions, including U.S. Central CLF Certificates, and CLF Pass-Through Loans from the CLF through U.S. Central to the corporate central credit union;
  - (f) Asset Accounts related to Member Reverse Repurchase Agreements without indemnity obligation;
  - (g) Claims on or unconditionally guaranteed by sovereign central governments of "AAA" rated countries; and

(h) Accrued interest receivable on any of the above.

(2) Category Two. Twenty Percent Risk Weight:

(a) Items, other than coin and currency, in process of collection;

(b) Claims on or portions of claims guaranteed by United States Government-sponsored corporations and enterprises;

(c) Claims conditionally guaranteed by the United States Government or its agencies or by United States Government-sponsored corporations and enterprises;

(d) Claims or portions of claims (including Repurchase Agreements) collateralized by securities issued by the United States Government or its agencies or by United States Government-sponsored corporations and enterprises;

(e) General obligation claims on state and local governments located in the United States;

(f) Claims on United States depository institutions (including Federal Funds sold) or claims on depository institutions (including Federal Funds sold) chartered in countries rated AAA, other than the United States, provided the depository institution meets at least one of the following conditions:

(A) The institution has a short-term debt rating not lower than A-2 (or equivalent) by any firm recognized by the SEC as qualified to assign risk ratings to various instruments required to be registered with the SEC;

(B) The institution has a long-term debt rating not lower than A- (or equivalent) by any firm recognized by the SEC as qualified to assign risk ratings to various instruments required to be registered with the SEC; or

(C) The institution has an issuer rating not lower than B/C (or equivalent) by any firm recognized by the SEC as qualified to assign risk ratings to various instruments required to be registered with the SEC.

(g) Claims on a corporate central credit union;

(h) Asset accounts related to Member Reverse Repurchase Agreements with indemnity obligations;

(i) Delivery Versus Payment (DVP) Repurchase Transactions in which the corporate central credit union receives the securities collateralizing the transactions, and the corporate central credit union is authorized to invest in these securities;

(j) Tri-party repurchase transactions with broker-dealers having at least \$100 million in capital which are collateralized by securities that the corporate central credit union is authorized to invest in;

(k) Asset-backed securities rated no lower than AAA with remaining weighted average lives of three years or less;

(l) All federally issued CMOs/REMICs and privately issued CMOs/REMICs as defined in Section 3(a)(41) of the Securities Exchange Act of 1934, excluding CMOs/REMICs collateralized by whole loan mortgages, that comply with the following limitations:

(A) An investment in a fixed-rate CMO/REMIC must have an expected average life not to exceed five years given an immediate and sustained increase of 300 basis points in mortgage loan commitment rates. This average life standard shall apply at the time of purchase and on any subsequent review date assuming market interest rates and prepayment speeds at the time that the test is applied. The corporate central credit union shall use the average of the prepayment estimates of several major securities broker-dealers as the prepayment assumption for the underlying mortgages. In computing the expected average life of a CMO/REMIC investment, it must be assumed that the anticipated rate of prepayment remains constant over the remaining life of the mortgage collateral. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability;

(B) If the CMO/REMIC has a variable interest rate with a cap, then the lesser of the highest interest rate cap or the final

interest rate cap during the average life at the time of purchase must be at least 200 basis points above the rate of the corresponding liability that it is matched against. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability;

(C) Any CMO/REMIC security downgraded below AA-(or equivalent) by the same SEC-recognized rating agency used when the investment was purchased, if material in amount, shall be divested;

(D) Privately issued CMO/REMIC securities shall not exceed five percent of the corporate central credit union's net assets for any single issuer.

(m) Secured loans to credit unions; and

(n) Accrued interest receivable on any of the above.

(3) Category Three. 50 Percent Risk Weight;

(a) Asset-backed securities rated no lower than AAA with remaining weighted average lives greater than three years;

(b) All CMOs/REMICs collateralized by whole loan mortgages that otherwise meet the requirements of paragraphs (2)(1)(A) through (D) of this rule;

(c) Accrued interest receivable on any of the above.

(4) Category Four. 100 percent Risk Weight which is hereby assigned to all other assets including, but not limited to:

(a) Loans to and investments in Credit Union Service Organizations;

(b) Unsecured loans to credit unions;

(c) All fixed assets, including land, buildings, furniture, fixtures, equipment, automobiles, and leasehold improvements;

(d) All Hold-in-Custody Repurchase Agreements;

(e) MCSD deposits in a corporate central credit union;

(f) Stripped Mortgage-Backed Securities;

(g) Residual Interests of CMOs/REMICs;

(h) Zero Coupon Securities with a maturity date more than five years from the purchase settlement date of the security;

(i) Claims, including commercial paper and corporate bonds, on United States chartered corporations and bank holding companies;

(j) Mutual Funds that do not qualify for a lower risk weighting;

(k) Prepaid Assets;

(l) Accounts Receivable and other receivables;

(m) NCUSIF Deposits;

(n) Mortgage servicing rights;

(o) Intangible assets; and

(p) Accrued interest receivable on any of the above.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

## **Corporate Reserves**

### **441-720-0130**

#### **Minimum Capital Ratio**

(1) The corporate central credit union shall maintain a minimum ratio of risk-based capital to risk-weighted assets as follows:

(a) By no later than December 31, 1992, primary capital shall be at least four percent of risk-weighted assets, or the corporate central credit union will develop and implement a plan acceptable to the Director for achieving an adequate level of primary capital consistent with the provisions of OAR Chapter 441, Division 720. This plan shall be submitted to the Director;

(b) By January 1, 1994, total capital shall equal at least eight percent of risk-weighted assets, or the corporate central credit union will develop and implement a plan acceptable to the Director for achieving an adequate level of capital consistent with the provisions of OAR Chapter 441, Division 720. This plan shall be submitted to the Director.

(2) The Director may modify the corporate central credit union's reserve requirements under special circumstances.

(3) The corporate central credit union's qualifying capital base shall consist of primary and secondary capital of which at least 50 percent shall be composed of primary capital.

(4) For purposes of calculating the amount of secondary capital, term subordinated debt shall not exceed 50 percent of secondary capital.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

### **441-720-0140**

#### **Procedures, Risk-Weight Ratios and Computations**

(1) Procedures. Balances sheet assets and credit equivalent amounts for off-balance sheet items are assigned to a risk-weight category. The total dollar amount in each category shall be multiplied by the risk-weight assigned to that category. The sum of the categories comprises risk-weighted assets.

(2) Frequency. The corporate central credit union shall calculate the ratio of capital to risk-weighted assets each month. A record of such calculation shall maintained.

(3) Risk Weights for Balance Sheet Assets. Each balance sheet asset shall be assigned a risk weight of 0 percent, 20 percent, 50 percent, and 100 percent as set forth in OAR 441-720-0120.

(4) Other Considerations:

(a) An investment in the shares of a mutual fund is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold. In addition, if the fund engages in the use of forwards, options, futures, or similar activities other than when used to reduce interest rate risk, then investments in the fund will be assigned to the 100 percent risk category; and

(b) Accruals will be assigned the risk-weighting of the underlying asset that they represent.

(5) Credit Conversion Factors for Off-Balance Sheet Items. Off-balance sheet items will be risk-weighted each month using the following credit conversion factors:

(a) Zero Percent Credit Conversion Factor. Unused portions of credit lines with original maturities of six months or less, or which are unconditionally cancelable;

(b) 50 Percent Credit Conversion factor:

(A) Unused portions of credit lines with original maturities exceeding six months; and

(B) Commitments to participate in a loan or loan package;

(c) 100 Percent Credit Conversion Factor:

(A) Irrevocable standby letters of credit guaranteeing financial performance, including VISA letters of credit issued by corporate central credit unions on behalf of their members, or standby letters of credit backing Industrial Revenue Bonds;

(B) Forward Commitments to purchase an asset or perform under a lease contract; and

(C) Securities held in safekeeping loaned with indemnification.

(d) Those items and credit conversion factors addressed on a case-by-case basis by the Director.

(6) Risk-based Capital Ratios:

(a) The primary capital ratio is computed by dividing primary capital by total risk-weighted assets;

(b) The total capital ratio is computed by dividing risk-based capital by total risk-weighted assets; and

(c) Month-end amounts will be used to calculate corporate central credit union capital ratios.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

## **441-720-0150**

### **Required Reserve Transfers**

(1) The amount that the corporate central credit union is required to transfer or set aside in corporate reserves is based

on both the corporate central credit union's primary and total capital ratios.

(2) Ranges of capital ratios have been established as set forth in OAR 441-720-0130. These ratios shall be associated with one of the six corresponding categories set forth in section (5) of this rule in determining the required reserve transfer.

(3) To qualify for a lower reserve transfer category, the capital ratios must fall in both the primary and total capital ratio ranges of the applicable category.

(4) The corporate central credit union shall set aside an amount equal to the appropriate required reserve transfer percentage times the corporate central credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365. Until January 1, 1994, transfers shall be based on the level of primary capital only.

(5) For purposes of determining the required reserve transfer, the following categories are established:

(a) Category 1. Category 1 requires a corporate reserve transfer percentage of at least 25 basis points of average daily assets when either the primary capital ratio is less than four percent or the total capital ratio is less than eight percent. A corporate reserve transfer percentage greater than 25 basis points of average daily assets is required if needed to bring either or both of the capital ratios up to the minimum acceptable level, or the corporate central credit union would have to obtain approval from the Director to operate below the minimum capital levels;

(b) Category 2. Category 2 requires a corporate reserve transfer percentage of 20 basis points of average daily assets when either the primary capital ratio is greater than four percent and less than six percent or the total capital ratio is greater than eight percent and less than nine percent;

(c) Category 3. Category 3 requires a corporate reserve transfer percentage of 15 basis points of average daily assets when either the primary capital ratio is greater than six percent and less than eight percent or the total capital ratio is greater than nine percent and less than 12 percent;

(d) Category 4. Category 4 requires a corporate reserve transfer percentage of ten basis points of average daily assets when either the primary capital ratio is greater than eight percent and less than 10 percent or the total capital ratio is greater than 12 percent and less than 15 percent;

(e) Category 5. Category 5 requires a corporate reserve transfer percentage of five basis points of average daily assets when either the primary capital ratio is greater than ten percent and less than 12 percent or the total capital ratio percentage is greater than 15 percent and less than 18 percent;

(f) Category 6. Category 6 requires a corporate reserve transfer percentage of zero basis points when the primary capital ratio is greater than 12 percent and the total capital ratio percentage is greater than 18 percent.

(6) Corporate credit unions must provide reserves necessary for full and fair disclosure.

Stat. Auth.: ORS 723.102, 723.156 & 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 730**

**CONSUMER FINANCE**

**441-730-0000**

**Statutory Authority; Purpose**

(1) OAR 441-730-0000 to 441-730-0260 are adopted pursuant to the rulemaking authority granted the Director by ORS 725.320.

(2) The purpose of the rules is to provide revised consumer finance rules. The rules are considered necessary to assure the proper conduct of the business regulated, to enforce the Consumer Finance Act and to protect the public, primarily in regard to interest rates and other charges.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.320

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0005; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

**441-730-0010**

**Definitions**

As used in OAR 441-730-0000 to 441-730-0260, unless the context requires otherwise:

- (1) The "Act" means the Oregon Consumer Finance Act in ORS Chapter 725 (ORS 725.020).
- (2) "Annual Percentage Rate" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.
- (3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and ORS 725.345(3), and other items charged to a borrower's account; but the term does not include interest or

deferral charges.

(4) "Deferral Charges" means the additional charge made for deferring all unpaid installments as provided by ORS 725.340 (2)(b).

(5) "Licensee" has the meaning given by ORS 725.010.

(6) "Loan" means a loan that is subject to the Act.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.320

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0007; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0020**

### **Criteria for Determining "Convenience and Advantage"**

(1) As used in ORS 725.140(1)(b) and 725.220(1):

(a) "Convenience" means fitting and appropriate;

(b) "Advantage" means to the advantage of the public interest in having sound financial institutions that are reasonably competitive and fully adequate for the needs of the community and that can be operated on a profitable basis.

(2) In determining whether granting an application for a license will serve the convenience and advantage of the community in which the business is to be conducted, the Director will, among other things, consider:

(a) The size of the primary and secondary service areas of the community where the business is to be located;

(b) The population of the community to be served and the increase or decrease of population in the last ten years;

(c) The agricultural, commercial, residential and industrial development of the community and the activity developing in the community such as industrial expansion, shopping centers, housing developments;

(d) Number of operating licensees and size of each in the community and the dates established;

(e) Present available sources of consumer loans in the community;

(f) The number of other financial institutions already serving the community, the size of such institutions, kinds and dates established in the community;

(g) Services being provided by all financial institutions now serving the community, and adequacy of those services compared to existing needs of residents and the services to be offered by the applicant;

(h) Capability of existing financial institutions in the community to handle potential growth of the area in the community;

(i) Advantages to the community offered by the applicant;

(j) Convenience physically of the locations of existing financial institutions to residents of the community, as compared to the convenience of the proposed business.

(3) When a licensee requests its license be amended to change the place it does business, the Administrator will apply

the criteria provided by section (2) of this rule in determining if the convenience and advantage of the community would be served by the licensee doing business at the new location.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.140(1) & 725.220

Hist.: BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0009

## **Notes, Mortgages, and Collateral**

### **441-730-0030**

#### **Fees, Charges Consumer Finance Companies Pay the Director**

(1) Effective February 1, 1989, the annual license fee under ORS 725.185 is \$375, and is due and payable on March 1 of each calendar year.

(2) A licensee who surrenders a license before the March 1 payment date must pay a fee of \$55 as a limited annual license fee.

(3) The rate of charge payable by a licensee is \$60 an hour per person payable by the licensee for the Director and each examiner and other division employe used in an examination conducted under ORS 725.312 and for extra services provided a licensee under ORS 725.185(2).

(4) Notwithstanding the rate of charge fixed by section (3) of this rule:

(a) If an examiner from the division or the Director is required to travel out of state in conducting the examination or providing the extra services, the rate of charge payable by the licensee is \$60 an hour per person, plus actual cost of travel; actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination is performed by a consultant hired by contract for the particular service or examination, the charge payable by the licensee is the actual cost to the division of the contract consultant.

(5) As used in this rule, "extra services" means any attention other than an examination given under ORS 725.310.

(6) In addition to the charges fixed by sections (3) and (4) of this rule, the Director will collect from a licensee any additional costs directly attributable to extra services given the licensee under ORS 725.185 or a special examination given the licensee under ORS 725.310.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.185

Hist.: FID 8-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-075-0015; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89

### **441-730-0050**

#### **Notes and Agreements Must Comply with the Act**

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee shall be so worded that they comply with all provisions of the Act.

(2) Any forms or agreements required or authorized by federal statute or regulations are considered in compliance with and authorized by the Act, if the form or agreement complies with the federal law and regulations.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.320

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0030; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0060**

### **Loans Not to be Payable on Demand; Exception**

(1) Except as provided by section (2) of this rule, a loan shall not be made payable on demand.

(2) A loan may provide that, if there is a default under the note or collateral security agreement, the loan may become due and payable immediately or on demand.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.050

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; Renumbered from 805-075-0040

## **441-730-0070**

### **Advertising Regulations**

(1) A licensee or other person shall not, in any advertisement printed, displayed, published, distributed, or broadcasted by the licensee or on his behalf include any reference to the supervision of the business of the licensee by this state or any department or official of this state, except the phrase "licensed under the Oregon Consumer Finance Act" or "Under state regulation" or both.

(2) A licensee shall retain a copy of all computer-generated advertising in a designated licensed office, or at another location with the prior approval of the Director, until the material has been reviewed by the examiner.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.060

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0045; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0080**

### **Qualifications of Person in Charge of Licensed Office**

A licensee shall not place any person in charge of a licensed office unless the person has a thorough understanding of the Act and the rules of the Division.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.310 & 723.140

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0050

## **441-730-0100**

### **Officers and Directors of Licensee; Removal or Suspension; Request for aHearing**

(1) An officer or director of a licensee addressed in an order issued by the licensing authority under ORS 725.315 or 725.317 may, within 30 days after the date the order is issued and served, request a hearing on the order as provided for contested cases by ORS 183.310 to 183.500, and the rules of the Director adopted pursuant thereto.

(2) An officer who is suspended or removed under ORS 725.315 or 725.317 shall not act in any official capacity, conduct any of the business of the licensee or have access to the books, records, or assets of the licensee either as an officer, director, partner, stockholder, or employe without receiving permission from the licensing official:

- (a) During the period of the suspension; or
- (b) After the effective date of the removal.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.315 & 725.317

Hist.: BB 3-1978, f. 5-16-78, ef. 7-1-78; Renumbered from 805-075-0057; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0110**

### **Accounting Records of Licensee**

(1) The accounting records of a licensee shall reflect a complete segregation of the loan transactions from any other business in which the licensee may be engaged.

(2) Separate control accounts or other acceptable records to reflect such segregation shall be maintained by the licensee for:

- (a) Loans receivable;
- (b) Fees; and
- (c) Repossessed property and sales of re-possessed property.

(3) The receipt and disbursement of all fees charged or collected shall be fully accounted for.

(4) Each licensee shall maintain a log of:

(a) Loans made, listing each loan in sequence by number or date of loan, and showing: Amount of the loan, type of security taken, rate of interest charged and the types of insurance for which premium charges have been made in connection with the loan and which are payable by the borrower;

(b) Loans prepaid in full by credit life insurance showing for each loan so paid the borrower's name and account number. The licensee shall also have the date of death of the borrower, the date proof of death is received by the licensee, and the disposition of the insurance proceeds with substantiating documents;

(c) Litigation initiated by the licensee showing for each proceeding the borrower's name and account number. The licensee shall also have the court where the proceeding is filed and date of filing and the date, amount, and terms of the judgment, if any.

(5) Any public or private sale of repossessed property by a licensee shall be made in good faith and in a commercially reasonable manner. Prior to a private sale of repossessed property, if there is no recognized market for the property, the licensee shall obtain, from persons who are not directly or indirectly related to the licensee, sufficient written bids to establish market value. The licensee shall obtain from each person, other than a bidder who buys any repossessed property, a signed statement describing the property purchased and the price the buyer paid for the property.

(6) When a judgment is entered in a court proceeding initiated by a licensee on a loan, the licensee forthwith shall place in the related loan file either:

(a) A copy of the judgment entered in the proceeding; or

(b) A statement, verified by a representative of the licensee, detailing the essential provisions of the judgment.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0060; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0120**

### **Account Record to be Maintained for Each Loan**

(1) A separate individual account record shall be maintained for each loan made to any borrower. The record shall show:

(a) The loan number;

(b) The date of the loan;

(c) The name and address of the borrower;

(d) A brief description of the security, if any;

(e) The agreed interest rate or rates and the amount of each charge, if any;

(f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms;

(g) The amount of each payment made on the loan, and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;

(h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and

(i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily-interest loan shall show, for each loan payment received: The amount, if any, applied to interest; the date to which the interest is paid; if payment is insufficient to pay interest to date, the dollar amount short; the amount applied to principal, if any; and the unpaid principal balance of the loan, if any remains.

(3) The account record for a precomputed-interest loan shall show, for each loan payment received: The amount of the payment applied to installments, identifying which installments; the amount applied to any default charges; and the unpaid balance of the loan and charges, if any remain.

(4) When a licensee makes advances to perform covenants, the account record shall specify the amount of the advance which is added to the principal of the loan, a brief description of what the advance is paying and, when the advance is to purchase insurance coverage, the type and extent of coverage.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0065

## **441-730-0130**

### **Index of Obligors to be Maintained**

A licensee shall maintain in each of its licensed offices an alphabetical index, or other index system approved by the Director, of every person obligated, directly or contingently, on a loan that is serviced at the office.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0070

## **441-730-0140**

### **Records and Files Required to be Kept at Servicing Office; Copies of Loans Transferred; Centralized Accounting Office Exception**

(1) A licensee shall maintain the accounting records and loan files for active loans at the licensed office where the loans are serviced.

(2) Whenever an active loan is for any reason transferred out of state, the licensee shall retain in the transferring office an exact copy of the individual account record and supporting legal documents.

(3) Whenever an active loan is for any reason transferred to another licensed office in this state, the licensee shall retain in the transferring office an exact copy of the account record to which has been added the date of transfer and the name and address of the new location of the account. If a bulk sale or similar transfer of loans not in the ordinary course of business is made to another office in this state however, the licensee may with the prior approval of the Director make other provision for the retention of copies of records and files and for the examination of accounts in the receiving office.

(4) Notwithstanding sections (1) through (3) of this rule, a licensee may, with the prior approval of the Director, maintain the accounting records and loan files for active loans at a location other than the servicing office, if:

(a) The other location is established by the licensee to provide centralized accounting for one or more licensed offices;

- (b) Off-site maintenance of the records and files will not hinder prompt servicing of the loans by the servicing office;
- (c) The Director, and the duly appointed examiners and deputies of the Director, have the right of free access to the records and files of the licensee at the other location; and
- (d) The other location provides adequate security for the licensee's records and files.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.330

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; BB 1-1983, f. 3-29-83, ef. 4-1-83; Renumbered from 805-075-0075

## **Computation of Interest and Charges**

### **441-730-0150**

#### **Consolidating Sales Financing Into Direct Loans**

(1) A licensee shall not make a direct loan to pay off a retail installment contract owned by or assigned to the licensee if the loan bears a higher annual percentage rate than that borne by the contract unless the loan is of substantial benefit to the borrower. A substantial benefit would exist in circumstances including, but not limited to, one or more of the following:

- (a) The retail installment contract is in default two installments or more; or
- (b) The amount of the individual installments payable on the direct loan will be lower than the amount of the individual installment being paid on the contract; or
- (c) The direct loan pays off one or more obligations in addition to the retail installment contract; or
- (d) The principal amount of the direct loan exceeds the sum of the unpaid installments on the retail installment contract by not less than 20 percent of the sum of the unpaid installments, or by \$200, whichever is less.

(2) As used in this rule "retail installment contract" has the meaning given the term by ORS 83.010 and 83.510.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.320

Hist.: BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0103; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

### **441-730-0160**

#### **Daily-Interest Computation**

(1) When interest on a loan is computed on a daily basis using a 360-day factor, the maximum charge for each day shall be 1/30th of the monthly rate. In determining the elapsed time for the purpose of computing interest on any such loan, each calendar month shall be treated as containing 30 days. However, when the period for which interest is computed includes the last day of the month:

- (a) If the month has 31 days, the 31st day shall be ignored;
- (b) If the month is February, two days shall be added to the period, except in leap year when only one day shall be added.
- (2) Interest on a loan may be computed on a daily basis using a 365-day factor or, in a leap year, a 366-day factor. In determining the elapsed time for the purpose of computing interest, or a refund of interest, on such a loan, the maximum charge for each day shall be 1/365th of the annual rate, except in a leap year when the maximum charge for each day shall be 1/366th of the annual rate.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0105

## **441-730-0170**

### **Precomputed Interest**

- (1) When a loan contract is one under which the loan is repayable in substantially equal and consecutive monthly installments of principal and interest combined, interest may be precomputed and added to the principal. Interest may be precomputed even though the first installment period is more or less than one month.
- (2) If the first installment period exceeds one month, the amount of the agreed monthly interest charge may be increased for the first period by 1/30th of the amount for each extra day in the first period. If the first installment period is less than one month, the amount of the agreed monthly interest charge shall be reduced for the first period by 1/30th of the amount for each day that the first installment period is less than one month.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0110; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0180**

### **Deferred Payment on Precomputed Loan**

- (1) When unpaid installments are deferred as provided by ORS 725.340(2)(b), the licensee shall give the borrower written evidence of the agreed deferral showing:
- (a) The amount of the deferral charge;
- (b) The new due date of the first deferred installment; and
- (c) The new due date of the final deferred installment of the loan.
- (2) The licensee shall also note the due date of the final deferred installment and the amount of the deferral charge on the borrower's account record.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340(2)

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0120

## **441-730-0200**

### **Action on Precomputed Loan; Rebate Required**

(1) When action is brought on a precomputed loan, if the action comes to judgment prior to the due date of the final installment, a rebate shall be made of interest unearned as of the date of the judgment. The rebate shall be computed in accordance with ORS 725.340(2)(c) as if the loan were prepaid in full on the date of the judgment.

(2) Rebate of any deferral charge shall be determined on an actuarial basis.

Stat. Auth.: ORS Ch. 705 & 725

Stats. Implemented: ORS 725.340(2)

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0130; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88

## **441-730-0210**

### **Recomputation of Interest on Delinquent Precomputed Loan**

If two or more installments of a precomputed loan are delinquent, the licensee may elect to recompute interest and other charges. A recomputation shall be made at the agreed interest rate, or at the annual percentage rate, from the date the loan was made, on actual unpaid balances, until the date the loan is paid in full. When such an election is made, the licensee shall recompute the interest charges from the date of the loan to the date of the election by applying every payment received prior to the election first to interest and then to the unpaid principal as of the date the payment was received. Recomputed interest so received is in lieu of the precomputed interest, including any deferral charges, and default charges which accrued prior to the date of the election.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0135

## **441-730-0220**

### **Insurance Premium Charges; Refunds**

If a loan contract is prepaid in full by cash, renewal, refinancing, or a new loan, one month or more before the final installment due date, the licensee shall refund to the borrower that proportion of the credit life and credit health insurance premium collected which the sum of the monthly balances scheduled to follow the installment date nearest the date of prepayment in full bears to the sum of all scheduled monthly balances, as computed in accordance with the rule commonly known as the "rule of seventy-eights." However, a licensee is not required to make a refund if the unearned insurance premium is less than \$2 and the loan is prepaid in full by cash.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0145

## **441-730-0230**

### **Insurance Benefits Paid to Licensee**

(1) When a death claim settlement is made on a borrower's account and the credit life insurance premium charged was based on the total of installments contracted, including both principal and anticipated interest, the licensee shall credit the borrower's account or estate in an amount not less than the total of all installments including both principal and unearned interest which were insured and scheduled to follow the date of the borrower's death. The licensee is entitled to accrue interest for not to exceed 30 days after proof of death is received by the licensee or until the date the insurance check is received, whichever is first to occur. A copy of the insurance check shall be retained in the file for auditing purposes.

(2) If premium charges for other types of credit life and credit health insurance have been charged to the account of the deceased borrower, the unearned charges shall also be credited to the borrower's account or estate from date of death.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0150

### **Licensee's Duties to Borrower**

## **441-730-0240**

### **Statement of Loan**

(1) In addition to the statement required by ORS 725.360(1), the licensee shall at the time each loan is made deliver to the borrower:

(a) A statement that payment in any amount may be made in advance at any time and, if the loan contains a prepayment penalty, the statement shall comply with the notice required by ORS 82.160(1);

(b) A detailed schedule showing the manner in which the proceeds of the loan have been disbursed or are to be disbursed on behalf of the borrower;

(c) When requested by the borrower, a copy of the security agreement, trust deed, or mortgage signed by the borrower, together with any attached schedule of property pledged by the borrower.

(2) When copies are requested by any other person obligated directly or contingently on the loan, the licensee shall also deliver a copy of the statements and other documents required by ORS 725.360(1) and section (1) of this rule to such other person whether the person is obligated as a maker, co-maker, guarantor, accommodation maker, indorser or otherwise.

(3) The statement required by section (1) of this rule may include disclosures that a licensee is required under applicable federal statutes to make to the borrower at the time the loan is made.

(4) A detailed schedule of disbursements required by subsection (1)(b) of this rule shall include the amount of the loan that is:

- (a) Applied to payment of the balance of an existing loan with the licensee;
- (b) Paid to others as authorized and designated by the borrower;
- (c) Paid for insurance premiums, itemizing the types of insurance that the borrower has approved in writing; and, if the coverage of any policy is less than the principal balance or the full term of the loan, state the balance and term covered;
- (d) Paid for other identifiable charges the borrower has approved in writing;
- (e) Retained for filing, releasing, recording, satisfaction, reconveyance, license, title transfer, and similar fees, itemizing the purpose of each fee; and
- (f) Remaining that is paid to the borrower.

(5) The licensee shall retain a copy of the statement of loan delivered to the borrower for at least two years after final entry has been made on the loan records.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.330, 725.340 & 725.360

Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0170

#### **441-730-0250**

##### **Receipt to be Furnished to Borrower Upon Request**

(1) When the borrower requests a receipt for a payment on a loan that is contracted for interest to be computed on a daily basis, the receipt shall specify the amount applied to interest, if any; the date to which the interest is paid, or the dollar amount short, if payment is insufficient to pay interest to date; the amount applied to principal, if any; and the unpaid principal of such loan, if any remains.

(2) When a borrower requests a receipt for a payment on a loan that is contracted for interest to be precomputed, the receipt shall specify the amount of the payment applied to the loan and to any default charges and the amount of the unpaid balance of the loan and charges, if any remains.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.360

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0175

#### **441-730-0260**

##### **Advances to Perform Covenants**

Within a reasonable time after advancing any sum pursuant to ORS 725.340(3), the licensee shall furnish the borrower a written statement showing the amount of the sums advanced, any charges with respect to such amount, any revised payment schedule and, if the duties of the borrower performed by the lender pertain to insurance, a brief description of the types of insurance paid for by the licensee. The amount advanced by the licensee may be added to the unpaid

balance of the loan and may bear interest at not to exceed the rate permitted by ORS 725.340(3). However, a licensee shall not advance any sums under ORS 725.340(3) or add any such advances to the unpaid balance of a loan unless the borrower's loan contract provides for such advances and additions.

Stat. Auth.: ORS Ch. 725

Stats. Implemented: ORS 725.340(3)

Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0180

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 740**

**PAWNBROKERS**

**441-740-0000**

**Definitions**

(1) Definitions of terms in ORS 726.010 govern the meaning of terms used in OAR Chapter 441, Division 740, except where the context otherwise requires.

(2) As used in ORS 726.040 and in Division 740 of OAR Chapter 441, except where the context otherwise requires:

(a) "Advertising" includes advertising on signs, inside or outside of a business premise and advertising in newspapers and flyers and on radio and television;

(b) An assumed business name or advertising of a business that would lead the public to believe the business is a licensed pawnbroker includes a name or advertising that uses "pawn", "hawk", "hock", or any synonym of any of those terms, in the assumed business name or in advertising referring to the business, whether used as a single word or part of a word.

Stat. Auth.: ORS Ch. 726

Stats. Implemented: ORS 726.010 & 726.040

Hist.: FID 2-1985, f. & ef. 7-22-85; Renumbered from 805-076-0050

**441-740-0010**

**Fees Payable by Pawnbrokers to the Administrator**

(1) For calendar year 1994 and thereafter, the annual license fee of a pawnbroker payable under ORS 726.125(1) and (2) is \$150.

(2) Whenever the Director provides extra services to a pawnbroker under ORS 726.125(3) or conducts an examination of a licensed pawnbroker under 726.250, the Director will collect the cost to the Division for the Director and the examiners and other Division employees used in providing the extra services or conducting the examination. The rate of charge is \$60 an hour per person.

(3) In addition to the charges fixed by section (2) of this rule, the Director will collect any additional costs directly attributable to extra services provided under ORS 726.125(3) or an examination made under ORS 726.250.

Stat. Auth.: ORS 726.125(3) & 726.250

Stats. Implemented: ORS 726.125 & 726.250

Hist.: FID 7-1985, f. & ef. 12-31-85; Renumbered from 805-076-0100; FCS 5-1994, f. & cert. ef. 4-25-94

## **441-740-0020**

### **Pawnbrokers Required to Use Reasonable Care in Caring for Pledges; "Reasonable Care" Defined**

(1) A pawnbroker shall exercise reasonable care to protect pledges from theft and burglary.

(2) As used in this rule unless otherwise required, "reasonable care" means:

(a) Having a method or system of promptly notifying the police or a security company when a burglary or theft occurs or is in progress; and

(b) Having a structure or enclosure in which the business is conducted that is designed, constructed, furnished and maintained so as to create physical deterrents to unauthorized entry or unauthorized removal of pledged goods, giving special consideration to security of high value items and weapons.

(3) In complying with section (2) of this rule, a pawnbroker shall give serious consideration to:

(a) An alarm system with a direct connection to an off-site security company or a police agency;

(b) A pawnbroker's shop that has bars on the windows, extra thick doors, vaults of heavy metal and similar structural deterrents to unauthorized entry;

(c) Safes for jewelry, gems and coins and storage areas for guns, all of which are so constructed and located as to deter and delay unauthorized entry and to provide time for a police agency or other security company to respond to a call in the event of a burglary or theft;

(d) The suggestions and recommendations of the local law enforcement agency or agencies; and

(e) Other or similar security precautions and systems.

Stat. Auth.: ORS Ch. 726

Stats. Implemented: ORS 726.380

Hist.: FID 2-1985, f. & ef. 7-22-85; Renumbered from 805-076-0300

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 750**

**OREGON CAPITAL CORPORATION PROGRAM**

**441-750-0000**

**Preliminary Matters**

(1) Scope and Purpose of Rules. These rules cover the requirements of the Division of Finance and Corporate Securities dealing with clearinghouse activities, certification, monitoring, continuing certification, decertification and advising the Oregon Capital Corporation under ORS 284.750 to 284.795, 316.104, 317.084, 317.140, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 and are adopted to implement the Oregon Capital Corporation Program.

(2) Effective Date. These rules are effective on February 1, 1988.

(3) Single Oregon Capital Corporation. ORS 284.755(2) allows only one operating Oregon Capital Corporation.

Stat. Auth.: ORS Ch. 284

Stats. Implemented: ORS 708.078, 708.430 & 716.588

Hist.: FCS 1-1988, f. 1-26-88, cert. ef. 3-1-88; Renumbered from 805-080-0000

**441-750-0010**

**Definitions**

For the purpose of this Chapter the following definitions are adopted:

(1) "OCC", means the Oregon Capital Corporation.

(2) "The Act" means ORS 284.750 to 284.795.

(3) "Division" means the Division of Finance and Corporate Securities.

Stat. Auth.: ORS Ch. 284

Stats. Implemented: ORS 708.078, 708.430 & 716.588

Hist.: FCS 1-1988, f. 1-26-88, cert. ef. 3-1-88; Renumbered from 805-080-0005

## **441-750-0020**

### **Clearinghouse**

Establishment of information file.

- (1) The Division will maintain a file on all information it obtains concerning the Oregon Capital Corporation except certification and continuation of certification information that is determined by the Division to be a trade or business secret.
- (2) This file is open to the public for examination and copying during regular business hours.

Stat. Auth.: ORS Ch. 284

Stats. Implemented: ORS 708.078, 708.430 & 716.588

Hist.: FCS 1-1988, f. 1-26-88, cert. ef. 3-1-88; Renumbered from 805-080-0010

## **441-750-0030**

### **Certification Procedures**

- (1) In General. The certification procedure involves three stages:
  - (a) Stage one deals with making a pre certification filing and doing continuing updates. This becomes the permanent file for the OCC. When this is done the Division will issue a letter of compliance with pre certification requirements;
  - (b) When the capital formation process is completed, to the extent that the necessary commitments are received the Division certifies the capital at stage two;
  - (c) If there is more than one applicant for certification, a comparative hearing shall be held to determine which will be allowed to become operational. Once the applicant is certified it shall be allowed to gather its capital under a stock escrow procedure;
  - (d) At stage three the Division issues a certification report indicating whether the OCC is meeting continuing requirements and has met requirements through that date.
- (2) Pre-certification filing. The initial filing is to determine whether the company is ready, willing and able to conduct the operations and to gather the necessary starting information so the agency can do its down-line responsibilities. The initial filing with the Division must include:
  - (a) Identification of persons involved. The name, address, and business occupation or affiliation of each person or organization that is the promoter, an organizer or incorporator of the Corporation, the initial officers and directors and proposed chief operating and financial person;
  - (b) Organizational documents. Articles of incorporation and proof of filing with the Corporation Division of the Secretary of State of Oregon, bylaws and all minutes of the board of directors shareholders including the organizational

and subsequent meetings prior to the filing with the Division;

(c) Articles of incorporation and bylaws as appropriate shall contain the following minimum provisions:

(A) The corporation shall be governed by a board of directors made up of not more than 15 members;

(B) Two or more of the board may be appointed by the Governor, will not have a vote, but shall have the right to attend all board meetings and observe and participate in the business of the board on behalf of the public interest;

(C) The purpose of the corporation is to earn a favorable rate of return for its investors consistent with the attainment of public policy objectives as set out in ORS 284.770(3);

(D) Not more than 30 percent of the stock of the corporation may be owned by or held for the benefit of any one beneficial owner;

(E) Investments shall be made in such amounts and in such entities that will allow the Oregon Capital Corporation to be continually certified under ORS 284.775;

(F) No funds of the corporation may be invested in stock or obligations of or property acquired from any stockholder of the corporation or any directors, officers or employees of any stockholder.

(d) The board minutes shall contain a resolution that the State of Oregon will be held harmless for any damages to an investor in the corporation;

(e) Capital formation. A declaration of the amount of capital to be qualified for tax credits, the plan for raising capital including copies of material to be used for disclosure, identification of sales personnel and specimen commitments and securities;

(f) Business plan. A business plan for the Oregon Capital Corporation;

(g) Accounting. The corporation's most current financial statement, budget and pro-forma financial statement based on the planned capitalization;

(h) Business history. A chronological business history of the corporation;

(i) Persons involved. Persons who are in place or are planned as directors or executive officers of the corporation, those who will be able to commit the corporation to investments, their general background and experience and special qualifications in venture capital financing and investing;

(j) All approvals or "no action letters" obtained or being sought from related agencies having jurisdiction of the transaction;

(k) Continuing updates of the foregoing.

(3) Certification filing. When the OCC has completed its capital formation procedures it shall notify the Division that it requests certification and:

(a) Submit copies of the commitments segregated by category of investors; and

(b) Where the investor is a regulated entity provide satisfactory evidence that the investments are authorized;

(c) No request for certification will be acted on prior to September 1, 1988, or a later date set by order of the Director;

(d) Certification can be made when the corporation has obtained a minimum of \$40,000,000 in binding commitments from financial institutions and institutional investors to provide capital to the corporation on or before January 1, 1989.

(4) Comparative procedures. If more than one corporation seeks certification, a comparative hearing will be held to determine which will be authorized to proceed as the Oregon Capital Corporation. The following items will be considered in determining which should be selected:

- (a) The base of support by way of investors who are committed to contribute;
  - (b) Adequacy and consistency of the business plan to the objectives of the enabling legislation is ORS 284.750 to 284.795, 316.104, 317.084, 317.140, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304;
  - (c) Experience and track record of the personnel in successful venture capital operations and investing;
  - (d) Chances for success and operations in the public interest.
- (5) Filing for continuing certification. As investments are made out of the original capitalization of the OCC, the OCC shall file a report for continuing certification and shall show for the end of each calendar year following the commencement of investment operations the following:
- (a) The individual amounts invested and the percentage this was of the total assets of the OCC at the time of the investment;
  - (b) Identification of the investment showing the name of the entity invested in, the nature of the investment, the location of the enterprise showing the county involved and a brief description of the nature of the business invested in;
  - (c) A cumulative summary of compliance or maintaining compliance with ORS 284.775.

Stat. Auth.: ORS Ch. 284

Stats. Implemented: ORS 708.078, 708.430 & 716.588

Hist.: FCS 1-1988, f. 1-26-88, cert. ef. 3-1-88; Renumbered from 805-080-0015

## **441-750-0040**

### **Waiver Provision**

Any provision in this rule may be waived or modified by order of the Director if the change is consistent with ORS 284.750 to 284.795, 316.104, 317.084, 317.140, 317.267, 318.031, 708.078, 708.430, 716.588 and 722.304 and no undue risk is created for the investors in the OCC.

Stat. Auth.: ORS Ch. 284

Stats. Implemented: ORS 708.078, 708.430 & 716.588

Hist.: FCS 1-1988, f. 1-26-88, cert. ef. 3-1-88; Renumbered from 805-080-0020

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 760**

**SAVINGS AND LOAN SECTION**

[ED. NOTE: Pursuant to Chapter 762, Oregon Laws 1985, and Administrative Order FID 3-1985, Administrative Rules relating to Savings and Loan were transferred from Corporations Division, OAR Chapter 815, Division 020.]

**General Procedures**

**441-760-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule under the Savings Association the Director shall give notice of the proposed adoption, amendment or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the Director's mailing list established pursuant to ORS 183.335(7).
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
  - (a) United Press International and Associated Press;
  - (b) Oregon Savings League.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.335(7)

Hist.: CC 21, f. & ef. 10-27-85; CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0000; Renumbered from 805-100-0000

**441-760-0010****Practice and Procedure Rules**

The Attorney General's Administrative Law Manual and Model Rules of Procedure effective September 26, 1983 is adopted by reference.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.341

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0007; Renumbered from 805-100-0005

**441-760-0020****General Waiver Provisions**

Any rule in this Division may be waived or modified by order of the Director. Any association seeking a waiver must provide proof that depositors are otherwise adequately protected, and:

- (1) That it will not be able to comply with the temporary rules because of present compliance with the rules being amended;
- (2) The federal statutes or rules have changed since the adoption of the temporary rules and it is necessary to modify the temporary rule to achieve consistency with the federal statutes or rules; or
- (3) Other reasons exist to grant a waiver or modification.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.408

Hist.: CC 24, f. 12-5-75, ef. 1-1-76; CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-20-001; Renumbered from 805-100-0010

**441-760-0030****Report of Insider Transactions**

(1) Authority and Background. ORS 722.108 deals with fiduciary relationship of directors, officers and employees to their associations. It requires prior board approval for various transactions where these persons have a personal interest in the business or transaction. This covers transactions such as ventures with or loans to companies where an officer, director or employee has a personal interest. ORS 722.342 deals with loans to directors and officers. These too, require board approvals. This rule is adopted under ORS 722.108, 722.342, under ORS 722.404 the general supervisory powers and under ORS 722.408 the general rulemaking powers.

(2) Creation of internal record. Each association shall create and maintain a file captioned "Insider Transactions". This file shall be maintained in Oregon:

- (a) It shall contain a narrative summary of each transaction falling under ORS 722.108 or 722.342 where the aggregate

amount for the transaction or for the person exceeds \$25,000. It shall be posted monthly and cover the beginning to the end of each transaction;

(b) It shall contain copies of all relevant correspondence with regulatory bodies including permissions received and copies of approvals by the board of directors;

(c) The file shall be kept for three years following the close of any transaction;

(d) The requirements of this section may be waived if an association has an alternative method of keeping the information, the information can be readily retrieved for regulatory review and the procedure is approved by the Director.

(3) Reports to the Director:

(a) Each association shall file a quarterly report with the Director within two weeks following the close of each calendar quarter. The report is required only if there were active, pending or continuing transactions under ORS 722.108 or 722.342 which exceeded \$25,000 for the transaction or the person during the quarter;

(b) The report shall be substantially in the following form:

**To Saving and Loan Director**

**From \_\_Association**

**Subject: Quarterly Report of Insider Transactions.**

**During the last quarter ending \_\_, 19\_\_our association had the following trans-actions under ORS 722.108:**

***(SELECT ONLY THOSE ITEMS THAT ARE RELEVANT)***

**(a) were opened during the last quarter.are pending approval by the board.**

**(b) were carried over from prior periods. were closed in the last quarter.**

**involve transactions where the loans were increased or extended in the last quarter.**

**(c) became delinquent for more than 30 days. delinquencies were cured. are carried as delinquent and involves \$.**

**During the same period our association had the following transactions under ORS 722.342:**

**(a) were opened during the last quarter. are pending approval by the board.**

**(b) were carried over from prior periods. were closed in the last quarter.**

**involve transactions where the loans were increased or extended in the last quarter.**

**(c) became delinquent for more than 30 days. delinquencies were cured.are carried as delinquent and involves \$.**

(4) Special rules for foreign associations. Foreign associations who are certificated to do business in Oregon do not have to comply with this rule unless:

(a) In the case of ORS 722.108 the business or transaction is located in Oregon, the person resides in Oregon or a major portion of the funding is provided with assets from the Oregon division of the association;

(b) In the case of ORS 722.342, the borrower is an Oregon resident or a major portion of the funding is provided with assets from the Oregon division of the association.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.108, 722.342 & 722.404

Hist.: CC 1-1985(Temp), f. 1-29-85, ef. 2-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-20-011; Renumbered from 805-100-0015

## **441-760-0040**

### **Due Diligence and Underwriting Notes on Loan and Real Estate Investments**

(1) Authority and Intent. This rule is adopted under ORS 722.408, the general rulemaking statute. The intent is to create a record of the underwriting and due diligence considerations for a loan or an investment involving real property. For the purpose of this rule an "investment involving real property" includes exchanges of real property.

(2) Who must comply:

(a) Domestic Associations. Domestic associations must comply with this rule when:

(A) The total amount involved is \$1 million dollars or more; or

(B) The board of directors must review the transaction as an "insider transaction" under ORS 722.108 or ORS 722.342.

(b) Foreign Associations. Foreign associations must comply if the conditions in subsection (a) apply and:

(A) The transaction is an Oregon division transaction or the borrower or transaction is otherwise in Oregon; or

(B) An Oregon officer, director or employee is involved; or

(C) A major part of the funding for the transaction involves assets of the Oregon division.

(c) What must be done. A written summary must be prepared which shows, in general, the background of the transaction, the logic for the transaction and the significant features of the transaction. No specific format is required. Each association should design its own format to meet its internal and expected external needs:

(A) This summary must be kept with the transaction file if the transaction is in Oregon; or

(B) The summary must be kept in Oregon if the transaction file is kept out of state.

(d) Effective date. The requirements of this rule must be met starting August 1, 1985. Where a transaction is ongoing the requirements of this rule must be met when:

(A) Commitments are issued or contracts to invest are entered into after the effective date;

(B) Funding of the transaction takes place or where the major portion of the funding is made after that date;

(C) Extensions of credit or any major workout transaction is involved after the effective date.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.108 & 722.342

Hist.: FID 3-1985, f. & ef. 8-22-85; Renumbered from 805-100-020

## Saving Associations (In General)

### 441-760-0050

#### Fees and Charges Savings Associations Pay the Director

- (1) Effective February 1, 1989, the annual regulatory fee under ORS 722.606(1), which is due and payable on or before March 1 of each calendar year by each savings association is \$1,500 plus \$70 for each \$1 million of assets or fraction thereof for each association with assets of over \$5 million.
- (2) The rate of charge payable by a saving association is \$60 an hour for the Supervisor and each examiner used:
  - (a) For an audit, examination or revaluation of an association conducted under ORS 722.438; and
  - (b) For extra service provided an association under ORS 722.606(2).
- (3) Notwithstanding section (2) of this rule:
  - (a) If the Supervisor or an examiner from the division is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$60 an hour plus cost to the division of travel and subsistence for each such person;
  - (b) If the work described by section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the savings association is the actual cost to the division of the contract consultant.
- (4) If the Supervisor or an examiner is required to travel out of state to conduct a regular examination under ORS 722.436, the Director will collect from the association the actual cost to the division of the out of state travel.
- (5) In addition to the charges fixed by sections (2) and (3) of this rule, the Director will collect from the savings association any additional costs directly attributable to the work described by section (2) of this rule.
- (6) As used in this rule:
  - (a) "Assets" means the average value of total assets reported by the savings association for the four calendar quarters ending with the quarter immediately preceding the due date of the fee. However, if a savings association was not in existence or doing business in this state during all of the prior calendar year, "assets" means the average assets reported on the quarterly reports for the quarters for which reports were required to be filed during the calendar year immediately preceding the due date of the fee;
  - (b) "Extra service" means any attention other than regular or special examination.
- (7) The annual regulatory fee of a savings association that is party to a merger or conversion, goes through a reorganization, or is liquidated or dissolved:
  - (a) Is not subject to refund in whole or in part if the merger, conversion, reorganization, liquidation or dissolution occurs prior to the end of the calendar year for which a fee has been paid;
  - (b) Is not subject to proration if the savings association operated during any part of the calendar year during which the merger, conversion, reorganization, liquidation or dissolution occurred.

Stat. Auth.: ORS Ch. 705, 706, 722, 723 & 725

Stats. Implemented: ORS 705.620, 722.606 & 722.438

Hist.: FID 6-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-100-0025; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; Suspended by FCS 1-1997(Temp), f. 2-26-97, cert. ef. 3-1-97

## **Part 1, Definitions**

### **441-760-0060**

#### **Special Definitions Related to Federal Laws or Rules That Are Adopted by Reference**

Except where the context requires otherwise:

- (1) The definitions in this rule apply only to language adopted by reference from Federal laws and rules.
- (2) All references to "Federal Home Loan Bank Board, the Board, a federal home loan bank, the Federal Savings and Loan Insurance Corporation (FSLIC or Corporation), the Director of the Office of Examination and Supervision, the principal Supervisory agent or Supervisory Agent", shall mean the Director.
- (3) "Federal association" or "insured institution" means a state chartered association, domestic or foreign, insured by FSLIC and doing business in Oregon.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 183.337 & 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0100; Renumbered from 805-100-0100

### **441-760-0070**

#### **General Definitions**

The following definitions are adopted for use in connection with rules in Division 760 except as treated in OAR 441-760-0060. Except where the context requires otherwise:

- (1) The "Oregon Act" shall mean the Savings Association Act, ORS Chapter 722.
- (2) "FHLB" means the Federal Home Loan Bank.
- (3) "FHLBB" means the Federal Home Loan Bank Board.
- (4) "FSLIC" means the Federal Savings and Loan Insurance Corporation.
- (5) "Oregon associations" or "association" means a state chartered domestic or foreign association insured by FSLIC and doing business in Oregon.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 183/337 & 722.204

Hist.: CC 24, f. 12-5-75, ef. 1-1-76; CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; Renumbered from 815-020-0005; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0105; Renumbered from 805-100-0105

## Part II, Federal Tie-In Rules

### 441-760-0080

#### Purposes, Intent and Authority for Rules in Part II

- (1) The rules in Part II adopt selected sections of federal laws and FHLBB rules relating to federal associations and make them applicable to Oregon associations.
- (2) The intent of these rules is to add to the powers and privileges granted in Oregon associations under ORS Chapter 722. Nothing in these rules shall be construed as limiting other powers and privileges granted to Oregon associations under the Oregon Act.
- (3) An association choosing to exercise rights and powers granted by the rules in this part is responsible for complying with all other applicable federal and state laws. Nothing in these rules is intended to waive the requirements of any other federal or state laws or rules.
- (4) These rules are adopted under ORS 722.204, the federal tie-in statute. Some of these rules are also adopted under different sections of the Oregon Act. Cross references are provided in Part III.
- (5) The rules in this part are subject to the provisions of OAR 441-760-0060 dealing with definitions for words used in this Part.
- (6) The cross references in parentheses are paragraph numbers in the United States League of Savings Institutions Federal Guide.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0200; Renumbered from 805-100-0200

### 441-760-0090

#### Tie-In to Home Owner's Loan Act of 1933

Adoption by Reference. The following sections of the Home Owner's Loan Act of 1933 as of July 12, 1984, are adopted by reference and made applicable to Oregon associations:

- (1) **12 U.S.C. 1464(a) (para. 3001)** relating to chartering and purpose.
- (2) **12 U.S.C. 1464(b) (para. 3002-3007)** relating to demand accounts, capital stock, authorization to borrow, give security, act as surety and issuer of notes, bonds, debentures or other obligations, credit card operations, issuance and sale of mutual capital certificates, except that subsection (b)(3) relating to borrowing from state mortgage finance agency is not adopted.
- (3) **12 U.S.C. 1464(c) (para. 3003-3007)** relating to investment authority except that subsection (c)(4)(B) dealing with maximum limits for investments in service corporations is not adopted.
- (4) **12 U.S.C. 1464(k) (para. 3032)** relating to acting as fiscal agent.

(5) **12 U.S.C. 1464(l) (para. 3033)** relating to acting as trustee of trust respecting stock bonus, pension or profit-sharing plans.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0205; Renumbered from 805-100-0205

## **441-760-0100**

### **Tie-In to Part 541 -- Definitions**

The following sections of the rules of the FHLBB dealing with definitions in effect as of July 1, 1984, are adopted by reference and made applicable to Oregon associations:

- (1) **12 CFR 541.2 (para. 3101)** which defines "Act".
- (2) **12 CFR 541.3 (para. 3102)** which defines "combination of residential real estate and business property involving only minor or incidental business use".
- (3) **12 CFR 541.4 (para. 3103)** which defines "combination of home and business property".
- (4) **12 CFR 541.5 (para. 3104)** which defines "cooperative housing development".
- (5) **12 CFR 541.9 (para. 3109)** which defines "interim federal association".
- (6) **12 CFR 541.10 (para. 3110)** which defines "interim state association".
- (7) **12 CFR 541.11 (para. 3111)** which defines "insured institution".
- (8) **12 CFR 541.12 (para. 3111)** which defines "general reserve".
- (9) **12 CFR 541.13 (para. 3112)** which defines "guaranteed loan".
- (10) **12 CFR 541.14 (para. 3113)** which defines "home".
- (11) **12 CFR 541.15 (para. 3114)** which defines "improved residential real estate".
- (12) **12 CFR 541.16 (para. 3115)** which defines "insured loan".
- (13) **12 CFR 541.17 (para. 3116)** which defines "regulatory net worth".
- (14) **12 CFR 541.19 (para. 3118)** which defines "short-term savings account".
- (15) **12 CFR 541.20 (para. 3119)** which defines "single-family dwelling".
- (16) **12 CFR 541.22 (para. 3121)** which defines "surplus".
- (17) **12 CFR 541.23 (para. 3122)** which defines "withdrawal value of a savings account".

- (18) **12 CFR 541.24 (para. 3123)** which defines "loans".
- (19) **12 CFR 541.25 (para. 3124)** which defines "commercial paper".
- (20) **12 CFR 541.26 (para. 3125)** which defines "corporate debt security".
- (21) **12 CFR 541.27 (para. 3126)** which defines "unimproved real estate".
- (22) **12 CFR 541.28 (para. 3127)** which defines "debit card".
- (23) **12 CFR 541.29 (para. 3128)** which defines "residential real estate".
- (24) **12 CFR 541.30 (para. 3129)** which defines "nonresidential real estate".
- (25) **12 CFR 541.31 (para. 3130)** which defines "improved nonresidential real estate".

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0210; Renumbered from 805-100-0210

## **441-760-0110**

### **Tie-In to Part 545 -- Operations**

The following sections of the rules of the FHLBB dealing with operations in effect as of July 12, 1984, are adopted by reference and made applicable to Oregon associations:

- (1) **12 CFR 545.1 (para. 3400)** dealing with general authority.
- (2) Reserved for expansion.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0215; Renumbered from 805-100-0215

## **441-760-0120**

### **Tie-In to Part 545 -- Savings Accounts, Capital**

The following sections of the rules of the FHLBB dealing with savings accounts and capital in effect as of July 12, 1984, are adopted by reference and made applicable to Oregon associations:

- (1) **12 CFR 545.11 (para. 3410)** dealing with insured accounts.
- (2) **12 CFR 545.12 (para. 3411)** dealing with demand deposit accounts.
- (3) **12 CFR 545.13 (para. 3412)** dealing with account records.
- (4) **12 CFR 545.14 (para. 3413)** dealing with determination and distribution of earnings.
- (5) **12 CFR 545.15 (para. 3414)** dealing with withdrawals.
- (6) **12 CFR 545.17 (para. 3416)** dealing with funds transfer services.
- (7) **12 CFR 545.18 (para. 3417)** dealing with issuance of mutual capital certificates.
- (8) **12 CFR 545.19 (para. 3418)** dealing with issuance of net worth certificates.
- (9) **12 CFR 545.20 (para. 3419)** dealing with borrowing, issuing obligations and securities and giving security.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0220; Renumbered from 805-100-0220

## **441-760-0130**

### **Tie-In to Part 545 -- Investments**

The following sections of the rules of the FHLBB dealing with investments in effect as of July 12, 1984, are adopted by reference and made applicable to Oregon associations:

- (1) **12 CFR 545.31 (para. 3430)** dealing with election regarding classification of loans or investments.
- (2) Loans:
  - (a) **12 CFR 545.-34(a) (para. 3445)** dealing with limitations for home loans secured by borrower occupied property;
  - (b) **12 CFR 545.45 (para. 3456)** dealing with manufactured home financing;
  - (c) **12 CFR 545.46 (para. 3457)** dealing with commercial loans;
  - (d) **12 CFR 545.47 (para. 3458)** dealing with overdraft loans;
  - (e) **12 CFR 545.48 (para. 3459)** dealing with letters of credit;
  - (f) **12 CFR 545.49 (para. 3460)** dealing with loans on securities;
  - (g) **12 CFR 545.50 (para. 3461)** dealing with consumer loans;
  - (h) **12 CFR 545.51 (para. 3462)** dealing with credit cards;
  - (i) **12 CFR 545.52 (para. 3463)** dealing with loans on savings accounts;

(j) **12 CFR 545.53 (para. 3464)** dealing with finance leasing.

(3) Other Investments:

(a) **12 CFR 545.71 (para. 3482)** dealing with liquid assets;

(b) **12 CFR 545.72 (para. 3483)** dealing with government obligations;

(c) **12 CFR 545.73 (para. 3484)** dealing with Inter-American Savings and Loan Bank;

(d) **12 CFR 545.74 (para. 3485)** dealing with service corporations;

(e) **12 CFR 545.75 (para. 3490)** dealing with commercial paper and corporate debt securities;

(f) **12 CFR 545.76 (para. 3491)** dealing with investment in open-end management investment companies;

(g) **12 CFR 545.78 (para. 3493)** dealing with leasing;

(h) **12 CFR 545.80 (para. 3495)** dealing with small business investment corporations.

(4) General Operations:

(a) **12 CFR 545.96 (para. 3511)** dealing with agency;

(b) **12 CFR 545.102 (para. 3517)** dealing with trustee;

(c) **12 CFR 545.103 (para. 3518)** dealing with suretyship.

(5) Other Activities:

(a) **12 CFR 545.136 (para. 3551)** dealing with financial futures transactions;

(b) **12 CFR 545.137 (para. 3552)** dealing with financial options transactions.

(6) **12 CFR 545.138 (para. 3553)** dealing with data processing services.

(7) Other Services:

(a) **12 CFR 545.141 (para. 3556)** dealing with remote service units (RSU's);

(b) **12 CFR 545.142 (para. 3557)** dealing with home banking services;

(c) **Appendix (para. 3558)** dealing with notice to housing creditors regarding alternative mortgage transactions.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0225; Renumbered from 805-100-0225

**441-760-0140**

**Tie-In to 545.82 -- Finance Subsidiaries**

The provisions of **12 CFR 545.82 (para. )**, dealing with finance subsidiaries, in effect as of July 18, 1984, are adopted by reference and made applicable to Oregon associations.

**Commentary:**

**-1-** Rule 545.82 was adopted by the FHLBB effective July 18, 1984. It allows an association to form a finance subsidiary to do things such as issue securities that the association could do directly.

**-2-** Application of the Oregon Securities Law. The Oregon Securities Law, ORS Chapter 59, should be reviewed in connection with offerings of securities by a subsidiary. It will probably require registration of the offering, licensing of the subsidiary as a broker-dealer and licensing of salespersons since the exemptions to savings associations do not extend to subsidiaries.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 1-1985(Temp), f. 1-29-85, ef. 2-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0226; Renumbered from 805-100-0226

**441-760-0150****Tie-In to Part 555 -- Board Rulings**

The following sections of the rules of the FHLBB dealing with board rulings in effect as of July 12, 1984, are adopted by reference and made applicable to Oregon associations:

- (1) **12 CFR 555.3 (para. 4102)** dealing with real estate.
- (2) **12 CFR 555.12 (para. 4111)** dealing with drive-in and pedestrian facilities.
- (3) **12 CFR 555.12 (para. 4112)** dealing with first liens on properties sold by the Secretary of HUD.
- (4) **12 CFR 555.18 (para. 4121)** dealing with deposit assurance of direct deposit of social security payments.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0230; Renumbered from 805-100-0230

**441-760-0160****Tie-In to Part 556 -- Statements of Policy**

The following sections of the rules of the FHLBB dealing with statements of policy in effect as of July 12, 1984, are adopted by reference and made applicable to Oregon associations: **12 CFR 556.9 (para. 4216)** dealing with imposition

of late charges and due-on-sales clauses.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0235; Renumbered from 805-100-0235

## **441-760-0170**

### **Tie-In to Federal Home Loan Bank Act -- Liquidity Statute and Rules**

(1) The provisions of the Federal Home Loan Bank Act dealing with liquidity requirements in general in **12 U.S.C. 1425(a)(5A)**, but excepting subsection (d) which deals with penalty assessments, in effect as of July 12, 1984, are adopted by reference and made applicable to Oregon associations. The provisions set out policies, purposes, maximums and minimums dealing with liquidity.

(2) The provision of the FHLBB rules dealing with definitions contained in **12 CFR 523.10** as of July 12, 1984, are adopted by reference and made applicable to Oregon associations.

(3) The provisions of the FHLBB rules dealing with liquidity requirements set forth in **12 CFR 523.11** as of July 12, 1984, are adopted by reference and made applicable to Oregon associations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0240; Renumbered from 805-100-0240

## **441-760-0180**

### **Tie-In to Flood Insurance Rules**

The rule of the FHLBB dealing with Flood Insurance contained in **12 CFR 523.29** as of July 12, 1984, is adopted by reference and made applicable to Oregon associations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0245; Renumbered from 805-100-0245

**441-760-0190****Tie-In to Accepting Pooled Account Rules**

The rules of the FHLBB dealing with accepting pooled accounts contained in **12 CFR 531.11** as of July 12, 1984, are adopted by reference and made applicable to Oregon associations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0250; Renumbered from 805-100-0250

**441-760-0200****Tie-In to Miscellaneous Provisions of FHLBB Rules**

The following provisions of the rules of the FHLBB in effect as of July 12, 1984, dealing with various subject matters are adopted by reference and made applicable to Oregon associations.

- (1) **12 CFR 561.13 (para. 4519)** dealing with regulatory net worth.
- (2) **12 CFR 563.13 (a)** except **subsection (a)(1), (b), (c), (e), and (f)** dealing with net worth requirements.
- (3) **12 CFR 563.17-3 (para. 4698)** dealing with forward commitments.
- (4) **12 CFR 563.17-4 (para. 4699)** dealing with financial futures transactions.
- (5) **12 CFR 563.17-5 (para. 4700)** dealing with financial options transactions.
- (6) **12 CFR 563.23-1 (para. 4711)** dealing with premiums, discounts, etc. with respect to loans.
- (7) **12 CFR 563.23-2 (para. 4712)** dealing with accounting for gains or losses with respect to securities transactions.
- (8) **12 CFR 563.23-3 (para. 4713)** dealing with accounting principles and procedures.
- (9) **12 CFR 563.29-1 (para. 4720)** dealing with continuation of insurance.
- (10) **12 CFR 563.(c)(10) (para. 4959)** dealing with accounting requirements.
- (11) **12 CFR 563.(c)(14) (para. 4963)** dealing with accounting for gains and losses.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 711

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0255; Renumbered from 805-100-0255

## Part III, Standards Under the Oregon Act

### 441-760-0210

#### Purposes, Intent and Authority for Rules in Part III

- (1) The rules in this part are **Purposes, Intent and Authority for Rules in Part III** adopted under various provisions of the Oregon Act which require the establishment of standards for associations regulated under the Oregon Act.
- (2) Some of the rules are also adopted under ORS 722.204, the federal tie-in statute in Part II. Cross references are provided.
- (3) The authority for the adoption of each rule is set out in the statutory authority section of each rule.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.204

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0300; Renumbered from 805-100-0300

### 441-760-0220

#### General Reserve and Net Worth

- (1) Statutory Authority. General reserve and net worth standards are required by ORS 722.142.
- (2) Definitions. "Net worth" means "regulatory net worth" as defined in **12 CFR 561.13 (para. 4519)** of the FHLBB rules as of July 12, 1984, which definition is adopted by reference.
- (3) General Reserve Requirement. A general reserve account for the absorption of bad debts and other losses shall be established in accordance with **12 CFR 563.13(a)** in effect as of July 12, 1984. That subsection, except for subsection (a)(1), is adopted by reference.
- (4) Net Worth Requirement. The new worth requirement, method of computation of net worth and for satisfying the net worth requirement shall be as set out in **12 CFR 563.13(b), (c), (e) and (f)**, in effect as of July 12, 1984. Those subsections are adopted by reference.
- (5) The FHLBB net worth rules are also adopted in OAR 441-760-220 under the tie-in statute.

**Commentary:** The general reserve and net worth requirements and standards are made identical with that of federal associations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.142

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0305; Renumbered from 805-100-0305

**441-760-0230****Accounting Requirements**

## (1) Statutory Authority:

- (a) Forms and date of publication of counter statements for associations are required by ORS 722.154;
- (b) Forms and accounting principles and practices for records of an association are required by ORS 722.156.
- (c) General rulemaking is allowed by ORS 722.408.

(2) Counter Statement. The statement of financial condition required to be made available to the public under ORS 722.154 shall be printed within 45 days of the end of the fiscal year for an association.

## (3) Accounting Principles and Records:

- (a) The books, records and reports of an association may follow the rule of the FHLBB contained in **12 U.S.C. 563.23-3** as of July 12, 1984, dealing with accounting procedures. That rule is adopted by reference;
- (b) The FHLBB rule is also adopted as a tie-in rule in OAR 441-760-0220;
- (c) The payment of dividends or distribution of undivided profits shall be made in accordance with generally accepted accounting principles;
- (d) A note shall be inserted in any financial statement prepared for periods after fiscal year end 1984, where an accounting statement other than generally accepted principles is used:

(A) Counter statements and other financials. The financial statements required by ORS 722.154 (counter statement) and reports required by ORS 722.434(1) (for preparation of the Supervisor's Annual Report), if prepared under regulatory accounting principles, shall contain a reference identifying the usage of regulatory accounting principles;

(B) Audited statements. Audited statements prepared under ORS 722.434(3), if prepared in accordance with regulatory accounting principles, shall reconcile the differences following generally accepted accounting principles for net earnings for the period involved and net worth at the latest balance sheet date.

(e) This rule is also made applicable to accounting for subsidiaries under ORS 722.306 prudent person and service corporations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.154, 722.156, 722.306 & 722.434(1)(3)

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0310; Renumbered from 805-100-0310

**441-760-0240****Liquidity**

(1) Statutory Authority. "Assets readily convertible to cash" are required to be defined by ORS 722.302. The statute also requires the setting of standards for liquidity.

(2) The provisions of the Federal Home Loan Bank Act dealing with liquidity requirements in general in **12 U.S.C. 1425a(5A)**, but excepting subsection (d) which deals with penalty assessments, in effect as of July 12, 1984, are adopted by reference. The provisions set out policies, purposes, maximums and minimums dealing with liquidity.

(3) The provisions of the FHLBB rules dealing with definitions contained in **12 CFR 523.10** as of July 12, 1984, are adopted by reference.

(4) The provisions of the FHLBB rules dealing with the liquidity requirements set forth in **12 CFR 523.11** as of July 12, 1984, are adopted by reference.

(5) The FHLBB rules and federal statute are also adopted in OAR 805-100-0270 under the tie-in statute.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.302

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0315; Renumbered from 805-100-0315

## **441-760-0250**

### **Service Corporations**

(1) Statutory Authority. A maximum limit is required to be set for investment that is allowed in service corporations by ORS 722.308.

(2) Investment Authority:

(a) An association may, subject to subsection (b) of this section, invest a maximum of three percent of its assets in the stock, obligations and other securities of its service corporations. This authorization is in addition to the investment authorized by ORS 722.309 which deals with public projects;

(b) Investments in service corporations justified solely under OAR 441-760-0130 whose activities are not compatible with the definition of a statutory "service corporation" in ORS 722.004(22) and are not in the "savings and loan business" as defined by ORS 722.004(25) may not exceed the limits placed by the Home Owner's Loan Act of 1933 in **12 U.S.C. 1464(c)(4)(B)** in effect as of July 12, 1984, which section is adopted by reference.

(3) Conditions for Investment. The prior consent of the Director must be obtained if:

(a) Any of the voting stock of the service corporation is available for purchase by or is owned by persons other than savings associations or federal associations;

(b) The proposed activity of the service corporation is not included as an approved activity under OAR 441-760-0130(3)  
(d). Where permission is sought under this subsection the proposed activity must be compatible with the definition of a "service corporation" under ORS 722.004(22) and "savings and loan business" under ORS 722.004(25);

(c) Debt Limitations. The debt limitations in OAR 441-760-0130 are made applicable to service corporations under this rule.

**Commentary:**

ORS 722.308 allows the Director to authorize up to 5 per cent of assets to be invested in service corporations. This rule carries over the 3 per cent limits under the prior Oregon rules. Subsection (2)(b) of this rule, limits investments in service corporations to the federal maximum for the service corporations that cannot be justified under state statutes. This is required because that power is adopted under the tie-in clause only and cannot exceed the federal counterpart. This means that investments in all service corporations, excepting ORS 722.309 service corporations cannot exceed three per cent of assets. Those service corporations who cannot meet the statutory definitions are in a subcategory that cannot exceed the federal maximum.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.308 & 722.309

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0320; Renumbered from 805-100-0320

**441-760-0260****Approved Investments**

(1) Statutory Authority. An approved list of certain government and corporate securities is required to be adopted by ORS 722.304(2)(a).

(2) An expanded list of eligible investments is adopted in OAR 441-760-0130(3). That rule is readopted under ORS 722.304 (2)(a).

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.304(2)(a)

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0325; Renumbered from 805-100-0325

**441-760-0265****Housing Agency Low Income Rental Housing Fund Client Trust Accounts**

(1) Every financial institution as defined in ORS 706.005, authorized by law to offer client trust accounts established pursuant to ORS 696.241 and to accept deposits to such accounts in Oregon may:

(a) Make available to its depositors, client trust accounts, hereafter designated as Housing Agency Low Income Rental Housing Fund Accounts ("Housing Fund Accounts"); and

(b) Pay interest on all funds deposited in each Housing Fund Account at the same rate payable on similar accounts.

(2) Each Housing Fund Account shall be created and maintained according to written agreement between the financial institution and participating depositor. Each agreement shall authorize the financial institution to pay all interest earned, net of fees and expenses imposed by the financial institution, to the Housing Agency Low Income Rental Housing Fund designated in Chapter 916, Oregon Laws 1989.

(3) Fees and Expenses:

(a) Each Housing Fund Account may be subject to fees and expenses which are reasonable and are customarily assessed by the financial institution for similar accounts;

(b) In no event shall a financial institution collect fees and expenses from a Housing Fund Account in excess of earned interest.

(4) Interest Remittances and Reports:

(a) Each participating financial institution shall remit to the Housing Agency any interest earned on each Housing Fund Account, net of reasonable fees and expenses. Remittance, if any, shall be made at least quarterly;

(b) Remittance may be made in a single aggregate installment representing net interest payable from all Housing Fund Accounts maintained by the financial institution;

(c) Each participating financial institution shall report to the Housing Agency information as to every Housing Fund Account maintained by the financial institution. The information shall be in writing and include identity of the Housing Fund Account by name, account number, interest earned, fees and charges, and net interest remitted, if any. Reports shall be made at least quarterly and may accompany any remittances.

(5) If a financial institution is required to produce tax information returns (Form 1099), the financial institution shall designate the State of Oregon Housing Agency Low Income Rental Housing Fund, as payee or recipient. Tax identification information shall be provided by the Housing Agency to participating financial institutions upon request.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 458.415, 696.254 & 706.790

Hist.: FCS 8-1989, f. 12-14-89, cert. ef. 1-1-90

## **Part IV, Policies, Positions and Interpretations**

### **441-760-0270**

#### **Purposes, Intent and Authority for Rules in Part IV**

(1) Statutory Authority. Agency directives and statements of general applicability that implement or prescribe law or policy or describe the procedure or practice requirements of any agency are required to be set out in rules OAR 183.310(7). ORS 722.416 requires the Director to publish or revise for distribution, decisions, opinions and rulings made regarding the statutes or rules.

(2) This part will be used to set out the policies and positions in order that all persons can be on notice of how the Director views a particular matter or how the Director intends to act on a particular matter. Interpretations resulting from formal rulings and advice from the Attorney General will also be included. Policies and positions are subject to change from time to time.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 183.310(8) & 722.416

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0400; Renumbered from 805-100-0400

**441-760-0280****Policy and Procedure Concerning Forms**

No forms are adopted for use in connection with the different types of applications in the Oregon Act. The agency will accept any filing provided the requirements of the statute or rule are met. Federal forms for like transactions are acceptable as long as all the requirements of the applicable statute or rules are met.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 183.310(8)

Hist.: CC 2-1984(Temp), f. 7-10-84, ef. 7-12-84; CC 3-1984, f. 12-26-84, ef. 1-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0410; Renumbered from 805-100-410

**441-760-0290****Policy Concerning Classification of Subsidiaries****(1) Background:**

(a) An Oregon association may have various types of subsidiaries. Different investment limits are applicable depending on how the subsidiary is classified:

(A) A "statutory service corporation" is one that meets the definition of a "service corporation" in ORS 722.004(22);

(B) A "public project service corporation" is one that meets the requirements of ORS 722.309;

(C) A "tie-in service corporation" is a service corporation allowed under FHLBB rules. Tie-in service corporations are allowed by OAR 441-760-0130(3)(d);

(D) A "finance subsidiary" is an entity allowed by OAR 441-760-0140 and by **12 CFR 545.82**;

(E) A "prudent person subsidiary" is a subsidiary created under the investment authority of ORS 722.306. Generally a prudent person subsidiary does not fit the definitions of a "public project", "statutory" or "tie-in" service corporation.

(b) During different periods various activities have been approved as statutory service corporations under rules which allowed the Director to approve the activity. On February 21, 1984, the Attorney General advised that the power of the Director to extend "service corporation" status was limited to those that met the statutory definitions and those approved under tie-in powers under ORS 722.204. This means that subsidiaries that are not public project service corporations, statutory service corporations and not a federal tie-in service corporation or finance subsidiary must be justified as prudent person investments.

**(2) Classification:**

(a) It is the policy of this office to classify the various investments in subsidiaries following the following priorities and considerations:

(A) As a finance subsidiary, if the requirements of **12 CFR 545.82** are met and permission is given by the Director;

(B) As a statutory service corporation, if the activity reasonably falls within ORS 722.004(21) and 722.004(22) and finance subsidiary status is not sought by the association;

(C) As a "public service corporation", if the activity falls within ORS 722.309 and permission is given by the Director;

(D) As a tie-in service corporation if it cannot be justified under paragraph (A), (B), or (C) of this subsection but is covered by OAR 441-760-130(3)(d);

(E) This procedure may be varied if an association chooses a more restrictive category for its subsidiary.

(b) If a reclassification of a subsidiary causes an association to be outside of its investment or debt limits, a reasonable time will be allowed to take corrective action. Reasonable time will be determined on a case to case basis with due consideration of the circumstances.

(3) **Mixing of Activities.** Prudent person, tie-in service corporation and statutory service corporation investments may be made in a single subsidiary. The company must, however, maintain adequate records:

(a) To reasonably distinguish and determine the respective type of investment made;

(b) To reasonably distinguish and determine the indebtedness related to the particular activities; and

(c) To reasonably determine the results of operation of that activity. This is all needed to determine applicable investment and debt limits.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.308, 722.309 & 722.311

Hist.: CC 1-1985(Temp), f. 1-29-85, ef. 2-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0415; Renumbered from 805-100-0415

## **Part V, Guidelines**

### **441-760-0300**

#### **Purposes, Intent and Authority for Rules in Part V**

(1) The rules in this section adopt guidelines and procedures for various transactions under the Oregon Act which require action to be taken by the Director.

(2) These rules are adopted under the general rulemaking powers under ORS 722.408 and also under the specific sections referred to in a particular rule under "authority".

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.408

Hist.: CC 1-1985(Temp), f. 1-29-85, ef. 2-1-85 FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0500; Renumbered from 805-100-0500

### **441-760-0310**

#### **Intrastate Branching or Relocation of Principal Office**

(1) **Authority.** Procedures for branching including establishment or relocation and relocation of principal offices are in

ORS 722.446, 722.448, and 722.452. Fees for branching are established by ORS 722.602. Rulemaking authority is also provided in ORS 722.448 to establish the information that must be filed for determination of public convenience and advantage.

(2) Filing Requirements:

(a) Fees. Filing fees required are \$200 for the establishment of a branch and \$100 for relocation of a branch or principal office;

(b) Items required to be filed. A copy of all documents filed with the FHLBB in connection with the same transactions, including subsequent amendments and supplements shall be filed as part of the application for branching or relocation. To the extent the following items are not covered by the federal application, they shall also be included:

(A) Identify the community where the branch is to be established or, in the case of a relocation, the present and proposed location;

(B) Show the population of the proposed community and state the facts or reasons relied on to establish that there is a reasonable promise of adequate support for the branch or principal office;

(C) Attach the most recent financial statement of the association and show facts relied on to establish that the financial structure and earnings are adequate to support the proposed branch or relocation;

(D) Show facts and reasons relied on to establish that the proposal will serve the public convenience and advantage;

(E) Attach copy of resolution of the board of directors approving the branching or relocation of home office.

(c) When is a filing necessary:

(A) all establishment of branch facilities, changes of location of a branch facility or principal office must be approved by the Director. A "branch" or "branch facility" is defined by ORS 722.004(3). It includes an established place of business or a mobile or other facility at which savings and loan business activity is carried on. It excludes a principal office. Automatic teller machines are considered a branch facility;

(B) Move within one mile. A filing fee is required for changes of location within one mile. Formal approval and notice procedures are not necessary;

(C) Move within 500 feet. The establishment of a drive-in facility or automatic teller machine within 500 feet of an existing branch or principal office does not require a filing fee or approval where the new installation is an adjunct of the branch or office.

Stat. Auth.: ORS Ch. 722

Stats. Implemented: ORS 722.448 & 722.452

Hist.: CC 1-1985(Temp), f. 1-29-85, ef. 2-1-85; FID 3-1985, f. & ef. 8-22-85; Renumbered from 815-020-0505; FID 2-1987(Temp), f. & ef. 4-9-87; Renumbered from 805-100-0505

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**Oregon Administrative Rules  
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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 800**

**COLLECTION AGENCY PROGRAM**

**Procedural Rules**

**441-800-0000**

**Notice of Proposed Rulemaking**

Before adoption, amendment or repeal of any rule, the Collection Agency Program shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action;
- (2) By mailing a copy of the notice to persons on the Collection Agency Program mailing list established under ORS 183.335(7);
- (3) By mailing or furnishing a copy of the notice to:
  - (a) The United Press International;
  - (b) The Associated Press;
  - (c) The Oregon Collector's Association;
  - (d) Capitol Press Room.

Stat. Auth.: ORS Ch. 697

Hist.: DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-100-0000

**441-800-0005**

## **Model Rules of Procedure**

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, adopted on January 27, 1986, are adopted as the rules of procedure for the Collection Agency Program.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Division of Finance and Corporate Securities]

Stat. Auth.: ORS Ch. 697

Hist.: DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-100-0005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 810**

**GENERAL**

**441-810-0000**

**Definitions**

The definitions of terms used in ORS 697.005 to 697.098, 697.990 to 697.992, and the rules of this OAR Chapter 441, Divisions 800 and 810, are:

- (1) "Repossessor" -- A person who takes possession of an item when the installment payment has been defaulted.
- (2) "Solicitor" -- A person who attempts to obtain clients for a collection agency or payments due a client of a collection agency.
- (3) "Trust Account" -- A bank checking account designated "client trust account" in which all funds received or handled by the collection agency on behalf of the agency's clients are deposited.
- (4) "Person" -- Any legal entity, including individuals, corporation, association, firms, and partnerships.
- (5) "Employed" -- working for salary or wages.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.085

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0001

**Registration**

**441-810-0010**

## **Certificate of Registration**

The Department of Insurance and Finance may issue a certificate of registration to persons engaged in the collection agency business.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0000; Renumbered from 814-101-0003; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

### **441-810-0020**

#### **Duration of Registration**

- (1) All registrations shall be issued on the date all registration qualifications are met and be valid for one year.
- (2) If the registration is issued after the first day of a month, the expiration date will be the last day of the month in which the certification of registration was issued.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; DC 16-1984, f. & ef. 5-1-84; Renumbered from 814-101-0005

### **441-810-0030**

#### **Renewal**

A certificate of registration may be renewed on or before the renewal date by payment of the required fee and submission of a current list of solicitors with desk names.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0010

### **441-810-0040**

#### **Application**

Application for registration shall be on forms provided by the Collection Agency Program and must be accompanied by the required fee.

- (2) Applications shall include:
  - (a) The information required by ORS 697.031(1)(a) through (e);
  - (b) The name of the collection agency trust account, account number, and financial institution name and address;

(c) Telephone number of the collection agency business;

(d) Name of the collection agency business manager;

(e) Addresses of all business locations.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031

Hist.: DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0015

## **441-810-0050**

### **Update Filings**

At least ten days prior to a change of ownership, business address, business manager, or change in information relating to the trust account, the collection agency business shall notify the Program in writing of the changes.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0020; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-810-0060**

### **Assumed Business Name**

Before registration or renewal of registration of a collection agency business:

(1) An individual using an assumed business name shall be registered with the Secretary of State.

(2) A corporation must be registered to do business in Oregon with the Secretary of State.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.0031(1)

Hist.: DC 3-1984, f. & ef. 1-16-84; DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0026; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **Collection Activities**

## **441-810-0070**

### **Return of Accounts**

(1) Immediately upon receipt of a certified mail request from the client, a collection agency business shall cease all collection attempts, unless a written contract requires otherwise.

(2) A collection agency business shall return all accounts to the client within 20 days from the receipt of the certified mail request from the client. Return of accounts shall include an itemized status report for the accounts being closed, showing name, amount assigned, payments collected, and amount still owing.

(3) If a client requests the return of accounts and there are no stipulations otherwise in a written contract, the collection agency must return all documents given it relating to the accounts; however, the collection agency's own work papers, contact sheets, etc., are the sole property of the collection agency, and need not be sent to the client.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.045(2)

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0040; DC 2-1986, f. & ef. 1-3-86; Renumbered from 814-101-0031

## **441-810-0080**

### **Office Closure**

When an agency closes an office, it shall notify the Department of Insurance and Finance within five days from closure and provide the following information:

- (1) Disbursement of records and clients' moneys.
- (2) Name and address of a contact person for future inquiries.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0036; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-810-0090**

### **Joint Trust Accounts**

A trust account may not be used jointly as a trust account and an operating account.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.058

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0050

## **441-810-0100**

### **Audits**

Collection agencies being audited shall provide working space in their office for the auditor or, if office space is not available, submit the records being audited to the Collection Agency Program within ten working days of the request for records.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.058(5)

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0055

## **441-810-0110**

### **Audit Charges**

(1) Audit charges shall be paid upon receipt of the invoice.

(2) The rate of charge payable by a collection agency is \$60 an hour for each person used in performance of the audit conducted under ORS 697.058(5).

(3) Notwithstanding section (2) of this rule:

(a) If a person from the Collection Agency Program is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$60 per hour plus cost to the Program of travel and subsistence for each such person;

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the collection agency is the actual cost to the Program of the contract consultant.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.058(5)

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0060; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-810-0120**

### **Claims**

(1) Persons having a claim against a collection agency may notify the Department of Insurance and Finance by mail. The information shall include:

(a) Name, address, and telephone number of the claimant;

(b) Name, address, and telephone number of the collection agency;

(c) The amount of money involved;

(d) A brief statement of the nature of the claim;

(e) A copy of the contract with relevant documents attached.

(2) If a court judgment is the basis for the claim, a copy of the judgment shall be attached.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.058(5)

Hist.: DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0070; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-810-0130**

### **Response to Claims**

- (1) A copy of a claim received by the Department of Insurance and Finance shall be sent to the collection agency.
- (2) The collection agency is required to respond in writing to the Department of Insurance and Finance within 15 working days.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.058(5)

Hist.: DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0072; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-810-0140**

### **Civil Penalties**

Civil penalties shall be \$400 for the first offense and \$1,000 for each subsequent offense.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.095

Hist.: DC 12-1984, f. & ef. 4-17-84; Renumbered from 814-101-0075

## **441-810-0150**

### **Fees**

Fees established for the Program are:

- (1) Initial registration, \$350;
- (2) Registration renewal, \$ 75;
- (3) Duplicate registration, \$ 10;
- (4) Certification of registration, \$ 5.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.031(3)

Hist.: DC 7-1981(Temp), f. & ef. 7-1-81; DC 15-1982, f. & ef. 7-26-82; CD 22-1983(Temp), f. 10-14-83, ef. 11-1-83; DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0035; Renumbered from 814-101-0100; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 830**

**REGISTRATION AND COLLECTION ACTIVITIES**

**441-830-0010**

**Application**

Application for registration shall be on the forms provided by the Credit Services Organization Program and must be accompanied by the required fee. Applications shall include:

- (1) The information required by ORS 646.386 - 646.392, Chapter 582, 1993 Oregon Laws (Senate Bill 1118), Sections 4 through 7;
- (2) Telephone number of the credit services organization;
- (3) Name of the credit services organization manager;
- (4) Addresses of all business locations; and
- (5) List of interested parties; including owners, partners, corporate officers, salespersons, agents, representatives and independent contractors who sell or attempt to sell the services of a credit services organization.

Stat. Auth.: SB 1118, Sections 4-7, 1993 Legislature

Stats. Implemented: ORS 646.386, 646.388, 646.390 & 646.392

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94

**441-830-0015**

**Notice of Cancellation Form**

- (1) The Notice of Cancellation Form must be attached to the contract, be easily detachable, and in duplicate.

(2) It must be printed in at least ten-point boldfaced type and must read as follows:

**"NOTICE OF CANCELLATION"**

**You, the consumer, may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed. If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt of your cancellation notice by the seller.**

**To cancel this contract, you must mail or deliver a signed and dated copy of this cancellation notice, or other written notice to:**

-

**(Insert name of credit services organization)**

-

**(Insert address/place of business  
of credit services organization)**

**not later than twelve midnight (Insert appropriate date).**

**I hereby cancel this transaction.**

\_\_\_\_\_  
**(Print Name)      (Signature)      (Date)**

Stat. Auth.: ORS 646.392(2) & 646.396(5)

Stats. Implemented: ORS 646.392(2)

Hist.: FCS 6-1994, f. & cert. ef. 4-25-94

**441-830-0020**

**Audit Charges**

When an audit is performed under ORS 646.396, Chapter 582, 1993 Oregon Laws (SB 1118), Section 9:

(1) Audit charges shall be paid upon receipt of the invoice.

(2) The rate of charge payable by a credit services organization is \$60 an hour for each person used in performance of

the audit conducted under Chapter 582, 1993 Oregon Laws SB 1118.

(3) Notwithstanding section (2) of this rule:

(a) If a person from the Credit Services Program is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$60 per hour plus cost to the Program of travel and subsistence for each such person;

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the credit services organization is the actual cost to the Program of the contract consultant.

Stat. Auth.: SB 1118, Sections 4-7, 1993 Legislature

Stats. Implemented: ORS 646.396(1)

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94

### **441-830-0030**

#### **Claims**

(1) Persons having a claim against a credit services organization may notify the Department of Consumer and Business Services by mail. The information shall include:

(a) Name, address, and telephone number of the claimant;

(b) Name, address, and telephone number of the credit services organization;

(c) The amount of money involved;

(d) A brief statement of the nature of the claim;

(e) A copy of the contract with relevant documents attached.

(2) If a court judgment is the basis for the claim, a copy of the judgment shall be attached.

Stat. Auth.: SB 1118, Sections 5, 9, 1993 Legislature

Stats. Implemented: ORS 646.388(4)

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94

### **441-830-0040**

#### **Fees**

Fees established for the Program are:

(1) Annual registration, \$350.

(2) Duplicate registration, \$10.

(3) Certification of registration, \$5.

Stat. Auth.: SB 1118, Sections 4(2), 1993 Legislature

Stats. Implemented: ORS 646.386(2)

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 850**

**GENERAL PROVISIONS, PUBLIC RECORDS, FEES**

**AND MISCELLANEOUS CHARGES, RULEMAKING, CONTESTED CASES, REQUESTS FOR OPINIONS**

**General Provisions**

**441-850-0005**

**Definitions**

- (1) Unless a specific definition is provided or the context otherwise requires, the words and phrases used in OAR Chapter 441, Divisions 850 through 899 have the meaning given them in ORS 183.310.
- (2) "Director" means the Director of the Department of Consumer and Business Services and the Director's authorized representatives.
- (3) "Department" means the Department of Consumer and Business Services.
- (4) "Person" includes individuals, partnerships, corporations, associations, firms, and joint stock companies.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.840

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

**441-850-0015**

**Waiver by Director**

The Director may, either upon request or upon the Director's motion, waive or modify the application of any particular

rule to a particular person when, in the Director's opinion, just and reasonable cause exists for such action and the waiving or modifying of such a rule would not be contrary to the provisions of ORS 59.840 through 59.960

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.900

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0025**

### **Mailing List**

(1) A person may request placement on the Department of Consumer and Business Services, Division of Finance and Corporate Securities mailing list and pay an initial fee of \$30 and an annual renewal fee of \$30 on or before January 1 of each year thereafter to receive the following:

- (a) Proposals to adopt, amend, or repeal rules;
  - (b) Adopted rules;
  - (c) Legislation initiated by the Director (initial bill only); and
  - (d) Enacted legislation effecting the statutes administered by the Director.
- (2) All persons who have not paid the renewal fee by the due date shall be removed from the mailing list.
- (3) The fee provisions of this rule shall not apply to:
- (a) Persons listed in OAR 441-850-0235;
  - (b) Governmental agencies; or
  - (c) Persons who establish to the satisfaction of the Director that extreme financial hardship would result from the payment required by section (1) of this rule.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 59.920

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0035**

### **Records and Reports Retention Period**

(1) All books and records required pursuant to the provisions of ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010 shall be maintained for a five year period as follows:

- (a) For the previous six (6) month period, records shall be maintained:
  - (A) At the principal place of business as designated by the licensee; or

(B) If the licensee provides notice to the Director, at the branch office of the licensee.

(b) For the period preceding the previous six (6) month period, records may be retained off site in remote storage if the licensee institutes an archiving system which provides for identification of the off site file drawer, box or storage container, and exact location.

(2) After six (6) months, a photograph on film, or an electronically produced record of each document may be substituted for the original document.

Stat. Auth.: ORS 59.860(1)

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. 12-1-96

## **Access to Public Records, Fees for Record Search, Copies of Public Records and Refunds**

### **441-850-0105**

#### **Applicability of Rule**

OAR 441-850-0105 to 441-850-0155 apply to all public records of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services relating to the regulation of Mortgage Brokers and Mortgage Bankers and govern the application of ORS 59.840 through 59.960 to these records. Confidential records of financial institutions and third parties are not included in the application of OAR 441-850-0105 to 441-850-0155.

Stat. Auth.: ORS 59.840 - 59.960, 697.732, 706.720, 722.419 & 731.264

Stats. Implemented: ORS 59.850(7) & 59.920(1)

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

### **441-850-0115**

#### **Access to Records**

(1) The Director, in carrying out responsibilities as custodian of public records under ORS 59.840 through 59.960 shall make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Department's duties.

(2) Public records relating to the regulation of Mortgage Brokers and Mortgage Bankers may be inspected or examined during the normal working days and hours at the Division of Finance and Corporate Securities of the Department of Consumer and Business Services. The inspection or examination shall take place at the main office or any other reasonable location designated by the Director.

(3) Access to and disclosure of the public records are subject to ORS 192.410 to 192.505, 697.732, 706.720, 722.419 and 731.264.

Stat. Auth.: ORS 59.840 - 59.960, 192.410 - 192.505, 697.732, 706.720, 722.419 & 731.264

Stats. Implemented: ORS 59.920(1)

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0125**

### **Requests to Inspect or Obtain Copies of Public Records**

A request to inspect or obtain copies of a public record or information from public records shall be made in writing or in person, and shall include:

- (1) The name, address or telephone number of the requestor, except as considered unnecessary by the Director;
- (2) An identification of the needed public record, or of the type and format of needed public record information, if known to the requester; and
- (3) The number of copies requested of the record, if copies are requested.

Stat. Auth.: ORS 59.840 - 59.960 & 293.445

Stats. Implemented: ORS 59.920(1)

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0135**

### **Payment for Inspection and Copies of Public Records**

- (1) A person who is receiving a copy of a public record or information from a public record shall pay for the Department's actual cost for:
  - (a) Staff time necessary to locate and handle the records, to delete material exempt from disclosure and to supervise the inspection by the requester;
  - (b) Producing the copy or the information; and
  - (c) Other supplies or services necessary to furnish the copy or information.
- (2) The Director may reduce or waive payment of the fee for access to a public record if the Director determines that the reduction or waiver will aid the effective administration of Department operations.
- (3) The Director shall not require payment of fees for the first copy of publications, statutes, or administrative rules from public libraries, public educational institutions, or from a federal, state, county or city agency participating in a cooperative program with the Department.
- (4) The requester shall pay all fees for access to a public record in advance unless later payment is approved by the Director.

Stat. Auth.: ORS 59.840 - 59.960 & 293.445

Stats. Implemented: ORS 59.920(1)

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0145**

### **Fees and Miscellaneous Charges**

The Director establishes fees and miscellaneous charges as follows:

- (1) Copies of records:
  - (a) Copies made on a standard office copy machine, 25 cents per page;
  - (b) Copies of microfilm, 25 cents per image;
  - (c) Copies of existing mailing lists, \$5 per 100 names, with no additional charge for staff time;
  - (d) Copies of video tapes, \$10 per tape;
  - (e) Copies of audio tapes, \$5 per tape;
  - (f) Copies of computer discs, \$5 per disc.
- (2) Certification of documents, \$3. This fee is in addition to fees listed under section (1) of this rule.
- (3) Staff time in excess of one hour required to locate, produce, summarize or otherwise provide records:
  - (a) Secretarial/clerical, \$16 per hour, \$4 per quarter hour;
  - (b) Professional/technical, \$29 per hour, \$7.25 per quarter hour.
- (4) Computer processing charges:
  - (a) Actual Department of Administrative Services charge for the job;
  - (b) Actual charge computed for in-house mini computer;
  - (c) Programmer/analyst and secretarial support time at rates indicated under section (3) of this rule.
- (5) Other documents:
  - (a) Administrative Rules and Oregon Revised Statutes:
    - (A) Companies or individuals regulated by the administrative rules requested, first copy free;
    - (B) Additional copies of rules, \$3 per set;
    - (C) Additional copies of ORS 59.840 through 59.960, \$3 per set.
  - (b) Mailing list related to the regulation of Mortgage Brokers and Mortgage Bankers by the Division of Finance and Corporate Securities of the Department of Consumer and Business Services, Statutes and Rules pursuant to OAR 441-850-0025:
    - (A) Initial fee-placement on mailing list, \$30;
    - (B) Annual renewal fee, \$30.

(6) The Director shall charge the actual cost for other materials not specifically identified in this rule.

Stat. Auth.: ORS 59.840 - 59.960 & 293.445

Stats. Implemented: ORS 59.920(1)

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-850-0155**

### **Refund of Monies**

(1) This rule pursuant to ORS 293.445 provides for the refund of monies paid in excess of the amount legally due to the Department of Consumer and Business Services pursuant to ORS 59.840 through 59.960.

(2) The Director shall not refund monies paid in excess of the amount legally due to the Department if the amount is \$10 or less, unless a refund is requested in writing by the applicant or the applicant's legal representative. However, the Director shall not make refunds unless the request is received within three years after the date payment is received by the Department.

Stat. Auth.: ORS 59.840 - 59.960 & 293.445

Stats. Implemented: ORS 59.850(7) & 59.920(1)

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **Rulemaking**

## **441-850-0205**

### **Periodic Review of Rules**

(1) The Director shall review and analyze all Department rules at least once every three years including rules reviewed during prior reviews and rules adopted after the last review.

(2) As part of the review, the Director shall invite public comment on the rules by giving notice pursuant to ORS 183.335(1).

(3) The notice shall identify the rules under review by number and subject matter.

(4) The notice shall state that the Director invites written comments concerning continued need for the rule; the complexity of the rule; the extent to which the rule duplicates, overlaps, or conflicts with other state rules, federal regulations, and local government regulations; the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule; the rule's potential for enhancement of job-producing enterprises; and the legal basis for the rule.

(5) The notice shall state the date by which written comments must be received and the address to which the comments should be sent.

(6) If the Director provides a public hearing to receive oral comments on the rules, the notice shall include the time and place of the hearing.

Stat. Auth.: ORS 183.335(1), 183.545 & 183.550

Stats. Implemented: ORS 59.900

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0215**

### **Petition to Adopt, Amend, or Repeal Rule: Contents of Petition, Filing of Petition**

(1) An interested person may petition the Director to adopt, amend, or repeal a rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain:

(a) The rule the petitioner requests the Director to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When amendment of an existing rule is sought, the affected portion of the rule shall be set forth in the petition in full with matter proposed to be deleted bracketed and matter proposed to be added underlined or shown in boldface;

(b) Facts or arguments in sufficient detail to show reasons for adoption, amendment, or repeal of the rule;

(c) All propositions of law asserted by petitioner;

(d) Sufficient facts to show the effect of adoption, amendment, or repeal of the rule; and

(e) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed.

(2) The petition shall be deemed filed when received at the Department.

(3) Upon receipt of the petition, the Director:

(a) May provide a copy of the petition and a copy of OAR Chapter 441, Division 850 to all persons named in the petition;

(b) May schedule oral presentations; and

(c) Shall within 30 days after the date of submission of the petition, either deny the petition in writing or initiate rulemaking proceedings in accordance with OAR Chapter 441, Division 850.

Stat. Auth.: ORS 183.390

Stats. Implemented: ORS 59.900

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0225**

### **Advisory Committee**

Prior to drafting any rule, the Director shall appoint an equal number of representatives from the Mortgage Banker and the Mortgage Broker communities to sit on an advisory committee to represent the interests of the persons likely to be affected by the rule or rules. The Director shall consider the suggestions of those persons in adopting rules.

Stat. Auth.: ORS 59.840- 59.960 & 183.025

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0235**

### **Notice of Intent to Adopt, Amend or Repeal Rules**

Prior to the adoption, amendment, or repeal of any rule under ORS 59.840 through 59.960, the Director shall give notice of the proposed adoption, amendment, or repeal:

- (1) By placing a notice in the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;
- (2) By mailing a copy of the notice to persons on the Department mailing list, established pursuant to ORS 183.335(7) and OAR 441-850-0025, at least 28 days prior to the effective date; and
- (3) By mailing a copy of the notice to the following persons and publications at least 28 days prior to the effective date:
  - (a) Oregon State Bar Bulletin;
  - (b) Capitol Press Room;
  - (c) Oregon Mortgage Bankers Association;
  - (d) Oregon League of Financial Institutions;
  - (e) Oregon Credit Union League;
  - (f) Oregon Financial Services Association;
  - (g) Oregon Association of Mortgage Brokers; and
  - (h) Oregon Bankers Association.

Stat. Auth.: ORS 183.335(5)

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-850-0245**

### **Temporary Rules**

- (1) Prior to filing a temporary rule or rules with the Secretary of State, the Director shall receive the written approval of the Attorney General that the Division's statement of findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned is legally sufficient.
- (2) If the Director has not given notice before adopting a temporary rule, the Director shall give copies of the temporary rule and the statements required under ORS 183.335(5) to persons, entities, and media specified under ORS 183.335(1).

Except as provided for under the provisions of OAR 441-850-0225, failure to give notice shall not affect the validity of any rule.

(3) A temporary rule is effective for 180 days unless a shorter period is specified in the rule.

Stat. Auth.: ORS 183.335(5)

Stats. Implemented: ORS 59.900

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0255**

### **Limitation of Economic Effect on Small Businesses**

(1) Based upon the Director's economic effect analysis, made pursuant to the provisions of ORS 183.335(2)(b)(D), or upon comments made in response to the Director's rulemaking notice, the Director shall, before adoption of a rule, determine whether the economic effect upon small business is significantly adverse.

(2) If the Director determines there is a significant adverse effect, the Director shall, as provided in ORS 183.540, limit the rule's economic impact on small business to the extent consistent with the public health and safety purposes of ORS 59.840 through 59.960.

Stat. Auth.: ORS 183.335, 183.540 & 183.545

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0265**

### **Conduct of Hearing**

(1) A hearing to consider a rule shall be conducted by and shall be under the control of a presiding officer who may be the Director or any other person the Director designates.

(2) If the presiding officer or Director has a potential conflict of interest as defined in ORS 244.020(7), that officer shall comply with the requirements of ORS 244.120 and 244.130.

(3) At the commencement of the hearing, any person wishing to be heard shall provide name, address, and affiliation to the presiding officer. Additional persons may be heard at the discretion of the presiding officer. The presiding officer may provide a form for witnesses to state their names, whether the witness favors or opposes the proposed action, and such other information as the presiding officer may deem appropriate.

(4) At the commencement of the hearing, the presiding officer may summarize the content of the notice provided pursuant to ORS 183.335, unless requested by a person present to read the notice in full.

(5) Subject to the discretion of the presiding officer, the order of the presentation shall be:

(a) Statement of proponents;

(b) Statement of opponents; and

(c) Statement of any other witness present and wishing to be heard.

(6) The presiding officer or the Director may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.

(7) There shall be no rebuttal or additional statements given by any witness unless permitted by the presiding officer.

(8) The presiding officer may continue the hearing.

(9) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Each exhibit shall be marked and shall identify the witness offering the exhibit. The Director shall preserve written exhibits pursuant to any applicable retention schedule under ORS 192.001 et seq.

(10) All persons who signed up to testify may testify. However, the presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

(11) The presiding officer may expel a person from a proceeding if the person engages in conduct that disrupts the proceeding.

(12) The presiding officer may provide for a verbatim record of all proceedings or may provide for a record in the form of minutes.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-850-0275**

### **Presiding Officer's Report**

Upon the Director's request, the presiding officer shall, within a reasonable time after the hearing, provide the Director with the minutes or a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations or exhibits. The presiding officer may make recommendations, but such recommendations are not binding upon the Director.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0285**

### **Director's Action**

At the conclusion of the hearing, or after receipt of the presiding officer's report and recommendation, if any, the Director may adopt, amend, or repeal rules covered by the notice of intended action. The Director shall fully consider all written and oral submissions.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0295**

##### **Notice of Director's Action; Certification to Secretary of State**

(1) The Director shall file with the Secretary of State a certified copy of each rule adopted, including rules that amend or repeal any rule.

(2) The rule shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or a later effective date is specified in the rule.

Stat. Auth.: ORS 183.335

Stats. Implemented: ORS 59.960

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

### **Contested Cases**

#### **441-850-0310**

##### **Notice**

In addition to the requirements of ORS 183.415(2), the notice of a preliminary order may designate the material which shall be the evidentiary record of the case upon default.

Stat. Auth.: ORS 183.415

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0320**

##### **Rights of Parties in Contested Cases**

In addition to information required to be given under ORS 183.413(2) and 183.415(7), before commencement of a contested case hearing, the Director shall inform each party in writing that:

- (1) If the party does not desire self-representation, the party must be represented by an attorney.
- (2) If the party is an agency, corporation, or an unincorporated association, the party must be represented by an attorney.
- (3) The attorney must be licensed in Oregon, provided however, that if the attorney is not licensed in Oregon but is licensed in another jurisdiction the attorney may appear if the Director approves.

Stat. Auth.: ORS 183.413

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0330**

### **Informal Disposition**

If the parties agree, informal disposition may be made of any contested case in any way and by any means other than binding arbitration.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0340**

### **Requests by Persons to Participate as Party or Limited Party**

(1) The Director shall give persons who have an interest in the outcome of a contested case hearing or who represent a public interest in the outcome the opportunity to participate as parties or limited parties.

(2) A person desiring to participate as a party or a limited party shall file a petition with the Director with sufficient copies for service on all parties at least 21 days before the date set for hearing. Petitions filed untimely shall not be considered unless the Director determines that the petitioner has shown good cause for failure to file timely.

(3) The petition shall include:

(a) Name and address of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how the results of the proceeding may affect such interest;

(e) If the petitioner seeks to represent a public interest in the outcome of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interests identified in subsection (3)(d) or (e) of this rule.

(4) The Director shall serve a copy of the petition on each party. Each party shall have seven days from the date of service to file a response to the petition.

(5) If the Director determines that good cause has been shown for failure to file a timely petition, the Director may:

- (a) Shorten the time within which answers to the petition shall be filed; or
  - (b) Postpone the hearing until disposition is made of the petition.
- (6) If the Director allows the petitioner to participate as a party or a limited party, the Director may postpone or continue the hearing if it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.
- (7) In ruling on petitions to participate as a party or a limited party, the Director shall consider:
- (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;
  - (b) Whether any such affected interest is within the scope of the Director's jurisdiction;
  - (c) The qualifications the petitioner represents in cases in which a public interest is alleged; and
  - (d) The extent to which the petitioner's interest will be represented by existing parties.
- (8) The Director may treat a petition to participate as a party as a petition to participate as a limited party.
- (9) The Director has discretion to grant petitions for persons to participate as a party or a limited party. The Director shall specify areas of participation and procedural limitations as the Director deems appropriate.
- (10) The Director's ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. The Director shall also serve petitioner with the notice of rights required by ORS 183.413(2).

Stat. Auth.: ORS 183.450

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0350**

##### **Requests by Agencies to Participate as a Party or an Interested Agency**

- (1) When the Director gives notice of an action that can result in a contested case hearing, the Director may name any other agency that has an interest in the outcome of that action as a party or as an interested agency, either on the Director's own initiative or upon request by that other agency.
- (2) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices, including notice of rights, as any party in the proceeding.

Stat. Auth.: ORS 183.450

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0360**

**Emergency Suspension or Refusal to Renew License: Notice of Opportunity for Hearing, Service**

- (1) If the Director finds a serious danger to the public health or safety, the Director may suspend or refuse to renew a license without hearing.
- (2) The Director shall serve the licensee with an order which includes:
  - (a) The statements required under ORS 183.415(2) and (3);
  - (b) The effective date of the suspension or refusal to renew the license;
  - (c) A statement that any demand for a hearing must be received within 90 days of the date of the order or the right to hearing is waived; and
  - (d) A statement setting forth specific reasons for the finding that a serious danger to the public health and safety exists.

Stat. Auth.: ORS 183.430

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

**441-850-0370****Contested Case Hearings**

- (1) The contested case hearing shall be conducted by and under the control of the presiding officer who may be the Director or any other person the Director designates.
- (2) If the presiding officer or the Director has a potential conflict of interest as defined in ORS 244.020(8), that officer shall comply with the requirements of ORS 244.120 and 244.130.
- (3) Subject to the discretion of the presiding officer, the hearing shall be conducted to include the following:
  - (a) The statement and evidence of the Director in support of the action;
  - (b) The statement and evidence of all other parties; except that limited parties may address only subjects within the area to which they have been limited;
  - (c) Rebuttal evidence; and
  - (d) Closing arguments.
- (4) The presiding officer or the Director, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the Director.
- (5) The presiding officer may continue the hearing.
- (6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.
- (7) The presiding officer may expel a person from a proceeding if the person engages in conduct that disrupts the proceeding.

(8) The exhibits shall be marked and maintained as part of the record of proceedings.

(9) If the presiding officer or Director receives any ex parte communication on a fact in issue during the contested case hearing, the presiding officer or Director shall notify all parties and otherwise comply with the requirements of OAR 441-850-0400.

Stat. Auth.: ORS 183.415

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0380**

### **Evidence in Contested Cases**

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Evidence admissible under this section includes:

(a) All evidence admissible in a civil case under the Oregon Rules of Evidence;

(b) Hearsay evidence unless the presiding officer determines that a party would be unduly prejudiced or injured by lack of cross-examination; and

(c) Certificates issued by the Director; certified copies of documents, orders, and entries filed or received at the Department; the Director's certificate as to the compliance or non-compliance of a document with provisions of law administered by the Director; and the Director's certificate of existence or non-existence of facts which would appear from the presence or absence of documents.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made as part of the order issued.

Stat. Auth.: ORS 59.840 - 59.960 & 183.450

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0390**

### **Optional Procedure for Determining Objections to Evidence**

(1) Any party wishing to introduce into evidence any affidavit, certificate, or other document without calling the declarant or custodian as a witness may serve upon every other party a copy of such document at least ten days prior to the hearing.

(2) If any party wishes to cross-examine the declarant or custodian, the party must give notice to the party proposing to offer the document at least five days prior to the hearing. If the party fails to do so, the document shall be received.

(3) If the declarant or custodian is not present for cross-examination after a request pursuant to section (2) of this rule, the presiding officer may still receive the document into evidence unless the presiding officer determines that the party requesting cross-examination would be unduly prejudiced or injured by lack of cross-examination.

Stat. Auth.: ORS 183.450

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0400**

##### **Ex Parte Communications**

(1) An ex parte communication is any oral or written communication to the Director or the presiding officer made out of the presence of all parties concerning a fact in issue.

(2) If the Director or presiding officer receives an ex parte communication during review of the contested case, the Director or presiding officer shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party an opportunity to rebut the substance of the ex parte communication at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.

(3) The Department's record of a contested case proceeding shall include:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The Director's or presiding officer's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence.

Stat. Auth.: ORS 183.415

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0410**

##### **Proposed Orders in Contested Cases; Filing of Exceptions and Argument; Adoption of Order**

(1) If the Director has not attended the hearing or reviewed and considered the record, the presiding officer shall serve a proposed order including findings of fact and conclusions of law upon the parties.

(2) When the presiding officer serves a proposed order, the presiding officer shall at the same time notify the parties that:

(a) Written exceptions and argument may be filed within 20 days of the service of the proposed order or within such longer time as the Director may direct;

- (b) Exceptions must identify specifically the findings, conclusion, or determinations to which the party excepts; and
- (c) If no written exceptions are filed, the proposed order will be final as of its date.
- (3) Upon receiving exceptions, the Director may, if the party excepted to specific findings of fact, order a transcript prepared and serve it on the party.
- (4) A party has 14 days upon receipt of the transcript to request corrections to the transcript and to submit written argument in support of the exceptions.
- (5) If the Director does not order a transcript, the party has seven days from filing of the exceptions to submit written argument to the Director unless the party submitted argument with the exceptions.
- (6) The Director may extend the time for argument upon a showing of good cause.
- (7) The Director, after receiving exceptions and argument, shall:
  - (a) Issue a final order; or
  - (b) Direct the presiding officer to take additional evidence and make additional findings on issues the Director designates.

Stat. Auth.: ORS 183.464

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0420**

### **Final Orders**

Final orders on contested cases shall be in writing and shall include:

- (1) Rulings on admissibility of offered evidence when the rulings are not set forth in the record.
- (2) Findings of fact -- Those facts that are either agreed upon or those facts that are determined by the presiding officer on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.
- (3) Conclusion(s) of law -- Applications of the controlling law to the facts found and the legal results arising therefrom.
- (4) An order -- The action taken by the Director as a result of the facts found and the legal conclusions arising therefrom.
- (5) A citation of the statutes under which the order may be appealed.

Stat. Auth.: ORS 183.470

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0430**

### **Default Orders**

(1) An order is final by default as of the date of the order if a party:

- (a) Fails to request a hearing on an order within the specified time;
- (b) Fails to appear at a specified time and place for a hearing on an order;
- (c) Withdraws a request for hearing on an order; or
- (d) Notifies the Director that the party will not appear at the hearing.

(2) An order that is to become final upon default shall designate or include the evidence constituting the prima facie case. In all cases, the record must contain substantial evidence to support the findings of fact.

Stat. Auth.: ORS 183.415 & 183.470

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0440**

### **Setting Aside Default Orders**

(1) A party may request a post-order hearing after the time for requesting a hearing has expired upon filing a request and affidavit which:

- (a) Shows the failure to request a hearing was due to mistake, inadvertence, surprise, or excusable neglect; and
- (b) Sets forth a meritorious defense to the matters contained in the order.

(2) The request shall be filed with the Director within 60 days of the expiration of the time for requesting the hearing.

(3) If the Director allows the request, the Director shall enter an order scheduling a post-order hearing. The order does not stay the order which became final on the default. If the request is denied, the Director shall enter an order setting forth the reasons for such denial.

Stat. Auth.: ORS 183.413

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0450**

### **Reconsideration and Rehearing**

(1) Unless an order becomes final through default, a party may petition the Director for reconsideration or rehearing of a final order.

- (2) The petition must be filed within 30 days after the date of the final order and be served on all parties.
- (3) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by written argument.
- (4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 441-850-0460(2).
- (5) The Director may limit the rehearing to specific matters.
- (6) The Director may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, it shall be deemed denied as provided in ORS 183.482.
- (7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).
- (8) A final order remains in effect during reconsideration or rehearing.
- (9) After reconsidering or rehearing the case, the Director shall enter a new order which may be an order affirming the existing order.

Stat. Auth.: ORS 183.482

Stats. Implemented: ORS 59.905

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0460**

### **Request for Stay**

- (1) Any person who petitions for judicial review of an order may request the Director to stay the enforcement of the order.
- (2) The stay request shall contain:
  - (a) The name of the person filing the request, identifying that person as petitioner and the Director as respondent;
  - (b) The title of the order;
  - (c) The date of the order;
  - (d) A summary of the order;
  - (e) The name of the petitioner and all other parties to the proceeding; and
  - (f) The address and telephone number of the petitioner and the address of all other parties to the proceeding except that if the petitioner or a party was represented by an attorney in the proceeding, then the name, address, and telephone number of the attorney shall be provided and the address and telephone number of the petitioner or party may be omitted;
  - (g) A statement advising all parties that they may participate in the stay proceeding before the Director if they file a response in accordance with OAR 441-850-0470 within ten days from service of the stay request on the Director;

(h) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm.

(i) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, the petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitations or conditions, the petitioner shall propose an amount of bond or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(j) A description of additional procedures, if any, the petitioner believes the Director should follow in determining the appropriateness of the stay request;

(k) An appendix of affidavits containing all evidence (other than evidence contained in the record of the contested case out of which the stay request arose) upon which the petitioner relies in support of the statements required under subsections (2)(h) and (i) of this rule.

(3) The request must be served on the Director and all parties identified in the request.

Stat. Auth.: ORS 183.482

Stats. Implemented: ORS 59.905 & 59.910

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0470**

### **Request for Stay -- Motion to Intervene**

(1) Any party desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The response shall contain:

(a) The title of the decision as it appears on the order;

(b) The name, address, and telephone number of the party filing the response, except that if the party is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the party's address and telephone number may be omitted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 441-850-0460(2)(h) in the petitioner's stay request;

(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (2)(c) and (d) of this rule.

(4) The response must be served on the Director and all parties identified in the stay request within ten days of the date

of service of the stay request.

Stat. Auth.: ORS 183.482

Stats. Implemented: ORS 59.905 & 59.910

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0480**

### **Request for Stay -- Determination**

(1) The Director may allow the petitioner to amend or supplement the stay request to comply with OAR 441-850-0460(2)(a) through (h) or (3). All amendments and supplements shall be served as provided in OAR 441-850-0460(3), and the time for response and Director's action shall be computed from the date of receipt by the Director.

(2) After the time for filing responses, the Director shall:

(a) Rule on the request based on the material before the Director;

(b) Conduct such further proceedings as the Director deems desirable; or

(c) Allow the petitioner within a time certain to submit responsive legal arguments and affidavits to rebut any response. Petitioner may not bring in new direct evidence through such affidavits. The Director may rely on evidence in such affidavits only if it rebuts intervenor evidence.

(3) The Director shall:

(a) Grant the stay request upon a showing of irreparable injury to the petitioner and a colorable claim of error in the order and may impose reasonable conditions, including but not limited to requiring the petitioner to post a bond or other undertaking and to file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time;

(b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury and a colorable claim of error in the order; or

(c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the order.

(4) The Director may receive evidence from Department staff concerning the stay request. The evidence shall be presented by affidavit within the time limits imposed by OAR 441-850-0470(4). If there are further proceedings pursuant to subsection (2)(b) of this rule, the staff may present additional evidence in the same manner that parties are permitted to present additional evidence.

Stat. Auth.: ORS 183.482

Stats. Implemented: ORS 59.905 & 59.910

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0490**

### **Time for Proceedings**

(1) Unless otherwise agreed to by the Director, petitioner and respondents, the Director shall commence any proceedings instituted pursuant to OAR 441-850-0470(2)(b) within 20 days after receiving the stay request.

(2) Unless otherwise agreed to by the Director, petitioner and respondents, the Director shall grant or deny the stay request within 30 days after receiving it.

Stat. Auth.: ORS 183.482

Stats. Implemented: ORS 59.905 & 59.910

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **Requests for Opinions and Declaratory Rulings**

### **441-850-0505**

#### **Policy and Procedure Concerning Requests for Opinions and Interpretations**

(1) Definition. For the purpose of this rule a "request for opinion or interpretation" is defined as an informal inquiry requesting confirmation of the existence of an exemption, requesting interpretation or advice on the applicability of ORS 59.840 through 59.960.

(2) Policy:

(a) In general. The intent of this rule is to formalize the opinion procedures in order that the requests for opinions can be handled expeditiously;

(b) Type of response. Responses to requests for opinions will be limited to:

(A) Notice that the Director takes the position that further action is not required;

(B) Notice that the Director takes the position that further action is required;

(C) Notice that the Director declines to take a position; or

(D) A modification of the foregoing where necessary for clarity.

(c) Limitations:

(A) Responses will only be in writing and will be based upon representations made;

(B) The Director reserves the right to change a position if additional facts or circumstances exist which warrant a change;

(C) No position will be taken where litigation is pending or is threatened, or where the questions are asked after the fact;

(D) Questions requiring significant additional research will be declined; and,

(E) Notice is given that responses by the Director do not constitute a rule or order. The response has no binding effect on any court or third party.

(3) Procedures for requesting opinions. All opinions and requests for interpretations must:

- (a) Be in writing, addressed to the Department of Consumer and Business Services, Division of Finance and Corporate Securities, Labor and Industries Building, Salem, OR 97310;
- (b) Concisely state the question and show all operative facts including the reason why the opinion is requested; and
- (c) Contain an analysis of the applicable law.

Stat. Auth.: ORS 59.840 - 59.960

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0515**

### **Requests for Opinions and Interpretations**

- (1) Any person may request the Director to issue an opinion with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Director.
- (2) Persons requesting opinions on the applicability of ORS 59.840 through 59.960 shall follow the procedures set forth in OAR 441-850-0505.
- (3) The Director may opine or decline to opine.
- (4) Opinions rendered under ORS 59.840 through 59.960 are binding on the Director and the requestor on the state of facts presented unless altered or set aside by a court.
- (5) Any party dissatisfied with an opinion may petition the Director for a declaratory ruling under OAR 441-850-0525 to 441-850-0575.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

### **Declaratory Ruling**

## **441-850-0525**

### **Petition for Declaratory Ruling: Contents of Petition**

The petition to institute proceedings for a declaratory ruling shall be in writing and contain:

- (1) The rule or statute that may apply to the person, property, or state of facts.
- (2) A detailed statement of the relevant facts, including sufficient facts to show petitioner's interest.
- (3) All propositions of law or contentions asserted by petitioner.

(4) The questions presented.

(5) The specific relief requested.

(6) The name and address of petitioner and of any other person known by petitioner to be interested in the requested declaratory ruling.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0535**

##### **Filing and Service of Petition**

(1) The petition shall be deemed filed when received by the Director.

(2) Within 60 days after the petition is filed, the Director shall notify the petitioner whether the Director will issue a ruling.

(3) The Director may decide not to issue a declaratory ruling in any specific instance.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0545**

##### **Contents of Notice of Hearing**

(1) If the Director decides to issue a ruling, the Director shall give a copy of the petition and OAR 441-850-0505 through 441-850-0575 and notice to all persons named in the petition.

(2) The notice shall state:

(a) The time and place of the hearing; and

(b) The designation of the presiding officer.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### **441-850-0555**

##### **Conduct of Hearing, Briefs, and Oral Argument**

(1) The hearing shall be conducted by and shall be under the control of the presiding officer who may be the Director or any other person the Director designates.

(2) At the hearing, petitioner and any other interested person shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the oral argument. Petitioner, division staff, and interested persons may file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0565**

### **Presiding Officer's Proposed Ruling**

Except when the presiding officer is the Director, the presiding officer shall prepare a proposed ruling in accordance with OAR 441-850-0575 for consideration by the Director.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-850-0575**

### **Director's Decision; Time, Form and Service**

(1) The Director shall issue the declaratory ruling within 60 days after the hearing or within 60 days of the time permitted for the filing of briefs, whichever is later.

(2) The ruling shall be in writing and shall include:

(a) The facts upon which the ruling is based;

(b) The statute or rule in issue;

(c) The Director's conclusion as to the applicability of the statute or rule to those facts;

(d) The Director's conclusion as to the legal effect or result of applying the statute or rule to those facts; and

(e) The reasons relied upon by the Director to support the conclusion.

Stat. Auth.: ORS 183.410

Stats. Implemented: ORS 59.840 & 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

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**Oregon Administrative Rules  
1998 Compilation**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 860**

**LICENSING OF MORTGAGE BANKERS AND MORTGAGE BROKERS**

**General Provisions**

**441-860-0010**

**Definitions**

- (1) The term "Branch Office" is defined as a location, separate from the principal place of business of the licensed mortgage broker or mortgage banker ("licensee"), where a licensee or persons authorized to act on behalf of a licensee perform the activities described in ORS 59.840(4)(a) and 59.840(6)(a).
- (2) The term "Principal Place of Business" is defined as that location, designated by the licensee, where the owners, officers, directors or other control person conduct the business of the licensee and maintains the books and records of the licensee.
- (3) "Employee" is defined as any individual who has an employment relationship, acknowledged by both the employee and the licensee, which meets the following conditions:
- (a) The employee receives payment or is paid by the licensee in a manner wherein deductions for Federal Unemployment Tax, Federal Insurance Contributions Act, and other such federal and state taxes have been withheld by the licensee;
  - (b) The licensee has the right to hire and terminate the employee, and hire and terminate the employee's assistants;
  - (c) The licensee provides the methods and procedures for performing the employee's services; and
  - (d) The licensee supervises the employee in the conduct of the employee's business and supervises the employee's compliance with applicable law and rules.
- (4) "Material Litigation" is defined as any past or pending litigation which would be relevant to the Director's action on an application for a mortgage broker or mortgage banker license, including but not limited to the following types of

## litigation:

- (a) Any conviction within the previous ten years from the date of the application, of a misdemeanor, an essential element of which is fraud, or for any felony;
  - (b) Any pending misdemeanor charge, an essential element of which is fraud, or any felony charge;
  - (c) Any civil action within the previous ten years from the date of the application, including suits filed in civil court, administrative actions, arbitration proceedings, or alternative dispute resolutions, involving allegations of financial misconduct and compensatory damages of \$10,000 or more;
  - (d) Any pending civil action including suits filed in civil court, administrative actions, arbitration, or alternative dispute resolution, involving allegations of financial misconduct and compensatory damages of \$10,000 or more; and
  - (e) Any bankruptcy filing or declaration of bankruptcy within the previous ten years from the date of the application.
- (5) The term "Independent Accountant" means a certified public accountant (CPA) or public accountant (PA) who holds an Oregon permit pursuant to ORS 673.150 or similar permit or license from another state or province.
- (6) The term "Negotiating a Loan" and "Negotiating Terms of a Loan" means discussing in any manner with a borrower or potential borrower, the amount of a loan, the interest rate or any other cost associated with the loan, the length of the loan, any terms or conditions of a loan, or the preparation of any loan application forms.
- (7) The term "Clients' Trust Account" means the account held in a federally insured financial institution into which Trust Funds, as defined pursuant to OAR 441-875-0010(6), are deposited.

Stat. Auth.: ORS 59.900(1)

Stats. Implemented: ORS 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## 441-860-0020

### Application Procedure

Each person desiring to obtain a mortgage banker or mortgage broker license shall apply to the Director by submitting the following:

- (1) A completed application on a form approved by the Director.
- (2) A surety bond or letter of credit pursuant to ORS 59.850(4) and OAR 441-860-0090.
- (3) Financial statements in accordance with generally accepted accounting principles, consisting of a balance sheet and a statement of income or operations which is dated not more than six months prior to submission of the application:
  - (a) The financial statements may be prepared by the licensee, except that if the Director finds it in the public interest, the Director may require that a licensee submit financial statements prepared by an independent accountant;
  - (b) If the financial statements are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application shall also be submitted.
- (4) Written authorization to examine the applicant's Clients' Trust Account pursuant to ORS 59.935(3) or, in the case of a neutral escrow depository, a copy of the escrow agreement pursuant to OAR 441-875-0040(3).

- (5) A copy of the written Notice to Financial Institution of Establishment of Clients' Trust Accounts pursuant to ORS 59.940.
- (6) The name of the registered agent of the mortgage banker or mortgage broker as filed with the Corporations Division of the Secretary of State for the State of Oregon.
- (7)(a) Each of the following persons shall submit the information required under the provisions of subsections (b) and (c) of this section:
- (A) Any director, officer, and shareholder with ownership of greater than or equal to ten percent of outstanding shares of a corporate applicant;
- (B) Owner, if the applicant is an unincorporated sole proprietorship; and
- (C) Each managing partner of a limited or general partnership.
- (b) A biographical statement including name, address, social security number, date of birth, and a description of any material litigation for the preceding ten years. If more than one name or social security number has been used by any of the persons submitting the biographical statement, all names and social security numbers must be submitted; and
- (c) An employment history for the ten years prior to the date of the application which shall include the name of each employer, job position and title, date each employment began and date each employment ended.
- (8) The information required pursuant to OAR 441-860-0030 for each branch office.
- (9) An initial application fee in the amount of \$500 and a fee of \$100 for each branch office operated by a licensee:
- (a) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010 is insufficient to fund the administration of ORS 59.840 through 59.960, the Director shall amend this rule to increase the fees to an amount necessary to fund the administration of ORS 59.840 through 59.960 plus a reasonable emergency fund;
- (b) In the event the Director determines that the amount of licensing fees assessed pursuant to this rule, combined with other fees assessed pursuant to ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010, exceeds the amount necessary to fund the administration of ORS 59.840 through 59.960, the Director shall amend this rule to decrease the fees to an amount necessary to administer ORS 59.840 through 59.960 plus a reasonable emergency fund;
- (c) If licensees have paid the licensing fees pursuant to this rule, and the Director finds that the total fees collected exceed the amount necessary to administer ORS 59.840 through 59.960 and provide a reasonable emergency fund, the Director may adjust the licensee's next renewal fee, following the making of such a finding, downward to provide for an equitable assessment of fees.

Stat. Auth.: ORS 59.850(1), 59.855(1) & 59.900

Stats. Implemented: ORS 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97

## **441-860-0030**

### **Branch Office Licensing**

In the event a mortgage banker or mortgage broker wishes to operate a branch office as defined in OAR 441-860-0010(1), the licensee must submit the licensing fee specified in OAR 441-860-0020(9) and provide the following information on the original license application form or upon an amendment to the original application:

- (1) The address of the location of each branch office, and the mailing address if different, and the branch office telephone number.
- (2) The name of the branch manager who will supervise the activities of the employees of the branch to insure compliance with all applicable rules and regulations.

Stat. Auth.: ORS 59.850(1) & 59.900

Stats. Implemented: ORS 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-860-0040**

### **Supervision of Branch Offices**

Branch offices shall be supervised by the licensee to insure compliance with all provisions of ORS 59.840 through 59.960 and OAR 441-850-0005 through 441-885-0010.

Stat. Auth.: ORS 59.870

Stats. Implemented: ORS 59.845

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-860-0050**

### **Renewal of Mortgage Banker and Mortgage Broker License**

Except as provided in section (6) of this rule, licensees shall renew for a 24 month period from the date of original licensing or last renewal. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, an application for renewal of the license shall be submitted to the Director and shall include the following:

- (1) A completed license renewal form approved by the Director.
- (2) Evidence of the surety bond or letter of credit renewal on a form approved by the Director and submitted pursuant to the provisions of ORS 59.850(4) and OAR 441-860-090.
- (3) Financial statements prepared by an independent accountant on a compiled basis consisting of a balance sheet and a statement of income or operations prepared in accordance with generally accepted accounting principals which is dated not more than six months prior to submission of the application. If the financial statements prepared by the independent accountant are more than six months old, interim period financial statements prepared by the licensee for the period ending the last full month prior to the date of application must also be submitted.
- (4) A licensee renewal fee in the amount of \$500 (\$250 per year) plus a fee of \$100 (\$50 per year) for each branch office license which is renewed.
- (5) The renewal application shall contain current information on officers, directors, or persons who own ten percent or more of the outstanding shares of a corporate applicant, or every owner if the applicant is unincorporated.

(6) A licensee may renew their license, one time only, for less than the full 24 months but more than 12 months for the purpose of changing the anniversary date of license renewal. The licensee shall pay a prorated renewal fee equal to \$20.83 for each month of renewal for the principal office and \$4.16 for each branch office for each month of renewal.

Stat. Auth.: ORS 59.850(7), 59.855(2) & 59.900

Stats. Implemented: ORS 59.855

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94

## **441-860-0060**

### **Equivalent and Related Experience**

(1) An applicant or a managing partner, director, executive officer or other individual occupying a similar position or performing similar functions who has experience in the following categories shall be given full credit for such experience toward meeting the experience requirement contained in ORS 59.850(2):

- (a) Origination of loans secured by lien interests in real estate;
- (b) Negotiation of loans secured by lien interests in real estate;
- (c) Underwriting of loans secured by lien interests in real estate; or
- (d) Persons who supervise the activities of those persons enumerated in subsections (a) through (c) of this section.

(2) An applicant who has experience, within the five year period preceding the application date, in the following categories may receive partial credit for such experience toward the experience requirement contained in ORS 59.840 through 59.960. Credit may be given in only one category listed and for not more than three years actual experience. Credit given shall be in the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker and mortgage broker license as set forth below. The remaining years of experience required to qualify for a license shall be obtained from experience in categories listed in section (1) of this rule. The categories of possible alternative experience for which partial credit is available, and the ratios of actual years of experience to equivalent years credited toward qualification for a mortgage banker or mortgage broker license are:

- (a) Escrow officer, 3:2;
- (b) Loan processor with responsibility primarily for loans secured by lien interests on real estate, 3:2;
- (c) Branch manager of lender with responsibilities primarily for loans not secured by lien interests on real estate, 3:1.5;
- (d) Loan officer with responsibility primarily for loans not secured by lien interests on real estate, 3:1.5;
- (e) Paralegal with demonstrated experience in real estate financing matters, 3:1;
- (f) Real estate broker with an Oregon license or a license from a state with substantially equivalent real estate licensing requirements, 3:1;
- (g) Title officer with a title company, 3:1;
- (h) Real estate broker, not within subsection (f) of this section, 3:1;
- (i) Real estate salesperson with an Oregon license or a license from a state with substantially equivalent licensing requirements, 3:1;

(j) Licensed real estate appraiser, 3:1;

(k) Real estate salespersons not included in subsection (i) of this section, 3:.5.

(3) An applicant who does not originate loan applications or negotiate loan terms but who is in the business of selling real estate paper whether as issuer, agent or principal, to persons other than persons enumerated in ORS 59.035(4), or who engages all or part of the time, for the account of others or for the person's own account, in the business of accepting funds from one or more persons other than persons enumerated in ORS 59.035(4) for investment in real estate paper, shall be given full credit for experience toward meeting the three of the past five year experience requirement contained for:

(a) Experience as a licensed securities salesperson under the provisions of ORS 59.165; or

(b) Experience as a securities salesperson effecting transactions in securities which are exempt from registration under the provisions of ORS 59.025 and 59.035.

Stat. Auth.: ORS 59.850(2) & 59.900

Stats. Implemented: ORS 59.840

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-860-0070**

### **Disclosure of Significant Developments**

A licensee shall be required to notify the Director within 30 days of the occurrence of any of the following significant developments:

(1) Licensee filing for bankruptcy or reorganization.

(2) Notification of the institution of license revocation procedures against the licensee in any state.

(3) The filing of a felony indictment against a licensee, officer, director or principal.

(4) A licensee, officer, director, or principal being convicted of a felony or misdemeanor involving fraud.

(5) Civil litigation, administrative actions, arbitration, and alternative dispute resolution proceedings involving a finding against a licensee, officer, director, or principal which resulted in findings against the licensee, key officer, director or principal of \$10,000 or more.

(6) A change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire ten percent of the stock, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation. The Director may require other information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control shall mean any change in principals of the organization, whether active or passive.

(7) Change in branch offices. In addition to the requirements of OAR 441-860-0030, licensees shall notify the Director when a branch office ceases to operate.

Stat. Auth.: ORS 59.850 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-860-0080**

### **Failure to Continually Satisfy Experience Requirement**

(1) In the event that a licensee fails to satisfy the experience requirements of ORS 59.850(3) during any licensing period regardless of the reason for that failure, the licensee shall:

(a) Notify the Director within three working days that the licensee no longer satisfies the experience requirement;

(b) Submit to the Director within seven calendar days of the occurrence, an inventory and status of pending loan application files including an accounting of all Clients' Trust Accounts;

(c) An accounting of all investor funds;

(d) Submit to the Director within one week of the occurrence a proposed plan to rectify the deficiency or a plan for the orderly transferral of business to a duly licensed mortgage banker or mortgage broker;

(e) Immediately cease accepting new applications from borrowers and, in the case of mortgage brokers who fund mortgages from investors other than institutions described in ORS 59.035(4), solicitation of funds and accepting such investor funds shall immediately cease.

(2) If the licensee fails to comply with the provisions of section (1) of this rule, the Director shall take appropriate action, consistent with the authority granted pursuant to ORS 59.840 through 59.965 to ensure that the interests of borrowers and investors are protected.

(3) If the licensee is unable to satisfy the Director that the experience requirement will be satisfied within 30 days, the Director may institute action to suspend or revoke the license.

(4) The Director may require and the licensee shall provide reports on the status of the licensee's business. Such reports shall be provided immediately and as often as the Director may require. The reports may be written or oral, or both as the Director may specify.

(5) If a licensee renews a license but does not conduct business, the experience requirement will not be satisfied.

Stat. Auth.: ORS 59.850(3), 59.865(10) & 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97

## **441-860-0090**

### **Surety Bond and Letter of Credit**

(1) Every applicant for a license as a mortgage banker or mortgage broker must file with the Director a surety bond as specified in section (4) of this rule or a letter of credit as specified in section (5) of this rule.

(2) Every person licensed as a mortgage banker or mortgage broker must maintain a surety bond as specified in section (4) of this rule or letter of credit as specified in section (5) of this rule during the period of licensing. Each surety bond or letter of credit shall be subject to the filing of a claim for acts during the term of the bond for a period of six years.

(3) In no less than six years after a person ceases to be licensed as a mortgage banker or mortgage broker, the person or the writer of the surety bond or letter of credit may apply to the Director on forms approved by the Director for release of the surety bond or letter of credit. Unless the Director determines that claims are pending against the person for violation of ORS 59.840 through 59.960, the Director shall release the surety bond or letter of credit.

(4) A surety bond shall be in a form and on terms approved by the Director in the sum of \$10,000 from a company authorized to transact an insurance business in the State of Oregon. The surety bond shall be renewed or replaced annually.

(5) A letter of credit shall be in a form and on terms approved by the Director in the sum of \$10,000 from a commercial financial institution authorized to transact banking business in the State of Oregon. The letter of credit shall be renewed or replaced annually.

Stat. Auth.: ORS 59.850(4) & 59.900

Stats. Implemented: ORS 59.840

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-860-0100**

### **Conditioning of Initial Applications for Purposes of Timely Implementation**

(1) For purposes of implementing the licensing provisions of Chapter 508, 1993 Regular Session Law (HB 3121) in a timely manner, the Director may issue licenses conditioned upon further review for the sixty days beginning January 1, 1994. In the event the Director issues such conditioned licenses, the review of the applications shall not exceed 60 days. Following review by the Director, if the Director determines that the application should not be denied upon one or more of the grounds specified in Section 6, 7, or 8 of Chapter 508, 1993 Regular Session Law (HB 3121), the Director shall notify the licensee that the application has been approved and the condition removed.

(2) The provisions of this rule shall cease to be effective at the close of business on March 31, 1994.

Stat. Auth.: Sec. 3, Ch. 508, OL 1993 (HB 3121)

Stats. Implemented: ORS 59.840

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-860-0110**

### **Audit Charges**

(1) Audit charges shall be paid upon receipt of the invoice of audit or examination fees.

(2) In addition to the initial application and renewal fees assessed pursuant to ORS 59.880 and OAR 441-860-0020(9) and 441-860-0050(4) licensees shall pay an audit charge in the amount \$60 an hour for each person used in performance of the audit.

(3) Notwithstanding section (2) of this rule:

(a) If an employee of the Department is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$60 per hour plus cost to the Program of travel and subsistence for each such person;

(b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the Mortgage Banker or Mortgage Broker is the actual cost to the Program of the contract consultant.

Stat. Auth.: ORS 59.880

Stats. Implemented: ORS 59.880

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-860-0120**

### **Commercial Transaction Exclusion**

(1) An exclusion from the definitions of mortgage banker and mortgage broker is granted pursuant to the provisions of ORS 59.840(4)(b)(N) and 59.840(6)(b)(M) for mortgage bankers and mortgage brokers who effect commercial loan transactions secured by a lien interest in real estate located in Oregon or with Oregon residents if:

- (a) The transaction involves a loan of money totaling \$5 million or more;
- (b) The property located in Oregon which in part secures the loan constitutes 25% or less of the total assets securing the loan; and,
- (c) The lender(s) are subject to oversight and supervision in their lending activities by some statutory regulatory authority.

(2) For purposes of this rule "commercial loans" are loans secured by a lien interest in real estate in which the funds are used for business, commercial or agricultural purposes.

Stat. Auth.: ORS 59.840(4)(b)(N) & 59.840(6)(b)(M)

Stats. Implemented: ORS 59.845

Hist.: FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96

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**Oregon Administrative Rules  
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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 865**

**RECORDS AND REPORTS**

**441-865-0010**

**General Provisions**

(1) All licensees shall maintain and preserve financial records concerning business operations, transactions with customers, and trust account transactions. The records shall be sufficient for an independent accountant to prepare a compiled, reviewed or audited financial statement on the business of the licensee.

(2) As used in OAR 441-865-0010 through 441-865-0050, "licensee" means a person licensed by the Director of the Department of Consumer and Business Services to do business as a mortgage banker or mortgage broker.

Stat. Auth.: ORS 59.860

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

**441-865-0020**

**Financial Records**

At a minimum the financial records shall include:

(1) A record, such as a cash receipts journal, of all monies received from borrowers showing at least:

- (a) Name of payor;
- (b) Date of receipt;
- (c) Amount received;

- (d) Purpose of receipt including identification of the loan to which it relates, if any;
  - (e) The disposition of all monies received including the date and place of deposit or, if not deposited, the date, name of the person who received the monies and the manner in which the monies were transmitted.
- (2) A sequential listing of all checks written for each bank account relating to the licensee's business, such as a cash disbursement journal, showing at least:
- (a) Name of the payee;
  - (b) Date of payment;
  - (c) Amount of the payment;
  - (d) Purpose of the payment including identification of the loan to which it relates, if any.
- (3) Bank account activity source documents for every account maintained for the licensee's business including at least:
- (a) Receipted deposit tickets and if "less cash deposits" are made, an explanation of the use of the cash;
  - (b) Paid checks if available and if these items are truncated, a copy of a document authorizing the Director to request and receive copies of processed items from the Financial Institution;
  - (c) Bank advices, including but not limited to debit and credit notices and overdraft notices;
  - (d) Monthly or periodic statements;
  - (e) Detail on wire transfers into or out of the account(s) including the name of the person who is the payor or payee, date, amount, purpose of receipt or payment, and identification of the loan to which it relates, if any.
- (4) A record or file of all monies owed by the licensee, such as an accounts payable journal.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94 cert. ef. 11-15-94

## **441-865-0030**

### **Advertising**

- (1) All licensees shall maintain copies of all printed advertising published in newspapers, magazines, newsletters or other media designed for mass distribution.
- (2) All licensees shall maintain copies of scripts, or audio and video tapes, for advertising broadcast on radio or television.
- (3) All licensees shall maintain copies of recorded telephone messages or voice mail messages which contain rate information.

Stat. Auth.: ORS 59.860, 59.900 & 59.945

Stats. Implemented: ORS 59.945

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-865-0040**

### **Borrower and Investor Complaints**

- (1) Copies of all written complaints by borrowers and investors shall be maintained in a separate complaint file by the individuals name in alphabetical order and shall contain at a minimum a copy of the original complaint and response.
- (2) Copies of correspondence related to the complaints and a written disposition of the complaint by an officer, director or control person of the company shall be maintained in the complaint file or in the borrower or investor file of the licensee.
- (3) Complaints unrelated to borrower or investor transactions need not be retained.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

## **441-865-0050**

### **Personnel Records**

- (1) Each licensee shall maintain a personnel ledger which shall contain the name, date of birth, position or title and responsibilities, starting date and date and reason for termination of salaried employees.
- (2) For purposes of this rule, personnel shall include salaried employees, independent contractors, and consultants who are involved in loan origination, loan servicing, loan negotiations, investor solicitation, or who transact business with borrowers or lenders.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

### **Additional Borrower Files**

## **441-865-0060**

### **Residential Borrower Files**

- (1) In the case of residential loans and applications for residential loans, and in addition to the books and records required under the provisions of OAR 441-865-0010 to 441-865-0040, licensees shall maintain the following:
  - (a) Copy of each executed loan application form;

(b) Copy of each executed fee agreement, if prepared;

(c) In the case of residential or single family loans, a borrower acknowledged statement that a loan interest rate will float or a copy of the executed "lock" agreement. The lock agreement shall specify at a minimum:

(A) Date of the agreement;

(B) File identification, and property address;

(C) Lock-in rate;

(D) Lock expiration date;

(E) Disclosure that the lock may be subject to change if any of the loan factors change;

(F) Loan type (Fixed, GPM, ARM, other);

(G) Disclosure that if the lock expires, the rate and points are subject to change;

(H) Term of the loan;

(I) Loan fee and discount, if any.

(d) A copy of the Good Faith Estimate prepared pursuant to Federal Regulation X;

(e) A copy of the executed Authorization to Release Credit Information Form;

(f) Copies of final credit report, or the report relied upon for the loan decision, if other than the final credit report, received on the borrower including documentation of borrower payment history;

(g) Copies of the Truth in Lending Disclosure Statement made pursuant to Federal Regulation Z.

(2) If the loan is funded by an investor other than persons enumerated in ORS 59.035(4) or (5), licensees are required to comply with the records requirements pursuant to OAR 441-865-0080.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-865-0070**

### **Commercial Borrower Files**

(1) In the case of commercial loans and applications for commercial loans and in addition to the books and records required under the provisions of OAR 441-865-0010 to 441-865-0040, licensees shall maintain the following:

(a) Copy of each executed loan application form;

(b) Copy of each executed fee agreement, if prepared;

(c) A loan commitment document from the lender specifying terms upon which the lender will fund including, the expiration date of the commitment, the interest rate, and other conditions which may be set by the lender;

(d) Copies of all credit report, or the report relied upon for the loan decision if other than the final credit report, received on the borrower including documentation of borrower payment history, if any.

(2) If the loan is funded by an investor other than persons enumerated in ORS 59.035(4) or (5), licensees are required to comply with the records requirements pursuant to OAR 441-865-0080.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-865-0080**

### **Investor Files**

(1) In addition to all other books and records required under the provisions of OAR 441-865-0010 to 441-865-0060, the following documents and records shall be maintained by licensees when borrower loans are funded by investors who are persons other than persons enumerated in ORS 59.035(4) or (5):

(a) A copy of the written disclosure document described in OAR 441-870-0050(1);

(b) A written statement, signed and dated by the investor acknowledging receipt of the written disclosure document and an opportunity to review the supporting documentation;

(c) The supporting documentation evidencing the summarized information contained in the disclosure document.

(d) A copy of the written evidence of obligation and the instrument creating the investor's lien or assignment of the lien as required pursuant to OAR 441-870-0060;

(e) A copy of documents evidencing that the instrument creating the lien or assignment has been recorded pursuant to the provisions of OAR 441-870-0060;

(f) Copies of guarantees, surety agreements, "with-recourse" agreements or guarantees, and correspondence related to the sale of real estate paper to the investor.

(2) The documents required under the provisions of subsections (1)(a) through (f) of this rule may be maintained in separate files designated "Investor Files" or in the borrower file at the option of the licensee.

(3) For those documents which do not contain the original executed signature of the investor, the requirements of this rule shall be deemed to be satisfied if the licensee maintains computerized records from which hard copies or reports can be generated provided that the reports contain all the information required under the provisions of this rule.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.860

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

### **Client Funds**

## **441-865-0090**

### **Trust Account and Escrow Depository**

In addition to the books and records required pursuant to the provision of OAR 441-865-0010 to 441-865-0080, licensees are required to maintain the books and records required under the provisions of OAR Chapter 441, Division 875.

Stat. Auth.: ORS 59.860 & 59.900

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 870**

**DISHONEST, FRAUDULENT, UNFAIR AND UNETHICAL PRACTICES**

**General Provisions**

**441-870-0010**

**Dishonest, Fraudulent, Unfair and Unethical Practices**

As used in ORS 59.865(2), the terms "dishonest, fraudulent, or illegal practices or conduct" and "unfair or unethical practices or conduct", separately or in any combination thereof, shall include but not be limited to those acts defined herein as "Manipulative, deceptive, or fraudulent device or contrivance" or "fraudulent, deceptive or manipulative act or practice".

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

**441-870-0020**

**General Definition**

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

- (1) Any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
- (2) The making of any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) Any representation by a licensee or a person acting on behalf of a licensee, that the licensing of any person with the Director or the failure of the Director to deny or revoke such license, indicates, in any way, that the Director has passed upon or approved the financial standing, business, or conduct of any person, or the merits of any transaction.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-870-0030**

### **Borrower Transactions**

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

- (1) Any representation or guarantee to a customer by a licensee or a person acting on behalf of a licensee that a loan can be secured by a date certain;
- (2) Entering into a lock agreement for a specific interest rate or advertising the availability of a lock agreement for a specific interest rate unless:
  - (a) The agreement or advertisement also specifies the terms of the lock agreement including the length of the lock period and the costs to the borrower associated with the lock agreement; and
  - (b) The licensee can demonstrate that they have successfully closed loans under lock agreements which provided for similar interest rates within similar time frames;
  - (c) For purposes of this rule, a "lock agreement" is defined as an agreement with a borrower made by a licensee, in which the licensee agrees that, for a specified period of time, a specific interest rate or other financing term will be the rate or term at which it will make a loan available to that borrower.
- (3) Any representation made to a customer by a licensee or employee of a licensee that interest rates, points, or other financing terms are available at the time the representation was made unless the interest rates, points, or terms are actually available within the time frame represented from:
  - (a) A lender with whom the licensee maintains a correspondent or loan brokerage agreement;
  - (b) A person exempt from licensing pursuant to ORS 59.840(4)(b)(A) or (B); or
  - (c) One or more persons, other than persons enumerated in ORS 59.035(4), provided that the licensee has a written commitment from such persons to fund the mortgage loan at the interest rate, points or other financing terms offered to the borrower.
- (4) Any advertisement or representation that all or most borrowers will qualify for a loan or that persons with bad credit histories or no credit histories will qualify for a loan unless the licensee can demonstrate that they have routinely successfully qualified persons with bad credit or no credit for loans;
- (5) Failing to refund within 72 hours of rejecting a loan, the advance fees paid which have not been distributed pursuant to a signed loan agreement or, in the event the loan agreement does not contain provisions for acceptance and distribution of advance fees, pursuant to a fee agreement;
- (6) Failing to account, after reasonable notice, to any person whose property secures a loan made by the licensee for any

money which that person has paid to the licensee for the payment of third party obligations including but not limited to, appraisal fees, title search fees, taxes, and insurance premiums; or

(7) If a borrower is unable to obtain a loan for any reason, failing to comply within (30) working days to a written request by the borrower made within 90 days of notice that the loan will not be obtained, for copies of any appraisal, title report, or credit report (unless the agreement between the licensee and the credit service prohibits such distribution) paid for by the borrower.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## 441-870-0040

### Legend Requirements

(1) If a residential loan agreement provides for a penalty to be charged for repaying the loan prior to the date provided for repayment in the loan agreement, it shall constitute a manipulative, deceptive, or fraudulent act or practice to fail to provide in printing or writing of a size equal to at least ten-point bold or underlined type substantially the following notice:

**NOTICE TO THE BORROWER: Do not sign this loan agreement before you read it. This loan agreement provides for the payment of a penalty if you wish to repay the loan prior to the date provided for repayment in the loan agreement.**

(2) If a residential loan agreement does not contain a notice as required by section (1) of this rule, a lender shall not collect from the borrower a penalty for payment of the loan prior to the date provided for repayment.

(3) If a residential loan agreement authorizes the lender to refuse to accept repayment of the loan prior to the date provided for repayment in the loan agreement, it shall constitute a manipulative, deceptive, or fraudulent act or practice to fail to provide in the loan agreement in printing or writing of a size equal to at least ten-point bold or underlined type substantially the following notice:

**NOTICE TO THE BORROWER: Do not sign this loan agreement before you read it. This loan agreement authorizes the lender to refuse to accept repayment of this loan prior to the date provided for repayment in this loan agreement.**

(4) If a residential loan agreement does not contain a notice as required by section (3) of this rule, a lender shall not refuse to accept repayment of the loan by the borrower prior to the date provided for repayment.

Stat. Auth.: ORS 59.900

Stats. Implemented; ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## 441-870-0050

### Investor Transactions

(1) "Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or

Practice" are defined to include failing to provide to investors who are persons other than persons enumerated pursuant of ORS 59.035(4) and (5), prior to the time of sale of any interest in real estate paper, a written disclosure document which contains the following information:

- (a) The priority of the lien created by the security and the total face amount of any senior liens;
  - (b) A statement whether any future advances may have a priority senior to that of the lien created by the security;
  - (c) A copy of the most recent complete property tax statement, covering the real property underlying the security;
  - (d) The value of the real property underlying the security. This value must be provided by:
    - (A) The tax assessed value if it is 100 percent of the true cash value and is on the same property underlying the security; or
    - (B) An appraisal by an independent licensed appraiser.
  - (e) The debtor's payment record, on the instrument being sold for the two years immediately preceding the sale. When the debtor's payment record is less than two years or not available:
    - (A) The payment record to date or a statement that payment records are not available; and
    - (B) A current credit report on the debtor prepared by a credit reporting agency or a current financial statement of the debtor.
  - (f) The terms of any senior lien or a copy of the instrument creating the lien and any assignments;
  - (g) If the mortgage seller, seller's agent, or any affiliate is the debtor, a statement disclosing that fact and the amount of cash paid to the debtor in consideration for the issuance of the real estate paper;
  - (h) A statement of any commissions, collection fees, and other costs chargeable to the purchaser of the real estate paper;
  - (i) A prominent statement of any balloon payments;
  - (j) In the case of a sale of junior real estate paper, a statement of the risk of loss on foreclosure of a senior lien; and
  - (k) A statement of whether or not the purchaser of the real estate paper will be insured against casualty loss.
- (2) In the case of transactions involving securities sold under a registration which is currently effective, compliance with the provisions of this rule shall be deemed to be satisfied if the licensee provides to the investor a copy of the offering memorandum which was submitted to the Director as part of the application to register securities pursuant to ORS Chapter 59.
- (3) In the case of transactions which are exempt from registration under the provisions of ORS 59.035(7), compliance with the provisions of this rule shall be deemed to be satisfied if the licensee provides to the investor a copy of the risk disclosure section of an offering memorandum prepared for sales of similar, but non-exempt securities, provided the memorandum was submitted to the Director as a part of the registration application and that the registration is effective at the time the the document is provided to the investor.

Stat. Auth.: ORS 59.035(7) & 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

**441-870-0060****Delivery of Additional Documentation**

"Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

- (1) Failure to deliver to the purchaser or licensed escrow agent or title company the written evidence of the obligation, properly endorsed, together with the instrument creating the lien; and
- (2) Failure to record the instrument creating the lien or assignment of the lien in a timely manner in the county or counties where the property is located and retain a copy of the recorded instrument in the customer file maintained by the licensee.
- (3) The provisions of section (2) of this rule do not apply when the purchaser is an institutional investor as enumerated in ORS 59.035(4) or an accredited investor as enumerated in ORS 59.035(5) provided the accredited investor has submitted an unsolicited written request that the instrument creating the lien or the assignment of the lien not be filed in the county or counties where the property is located.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

**441-870-0070****Servicing Transactions**

For licensees who service mortgage loans, "Manipulative, Deceptive, or Fraudulent Device or Contrivance" and "Fraudulent, Deceptive, or Manipulative Act or Practice" are defined to include:

- (1) Failure to disclose that the lender may sell the loan to another party.
- (2) Failure to provide to borrowers an annual statement of the account of the borrower showing

the unpaid principal balance of the mortgage loan at the end of the immediately preceding 12-month period, the interest paid during such period, the amounts deposited into escrow and the amounts disbursed from escrow during the period.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.865

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 875**

**CUSTODY AND POSSESSION OF CLIENT FUNDS**

**441-875-0010**

**Definitions**

As used in OAR 441-875-0010 to 441-875-0040, unless the text requires otherwise:

- (1) "Licensee" means person licensed by the Director of the Department of Consumer and Business Services in one of the following categories:
  - (a) "Mortgage Banker" as described in ORS 59.840(4);
  - (b) "Mortgage Broker" as described in ORS 59.840(6).
- (2) "Branch Office" means a location, separate from the principal place of business of the licensed mortgage broker and mortgage banker, where a licensee or persons authorized to act on behalf of a licensee perform the activities described in ORS 59.840(4) and 59.840(6).
- (3) "Financial Institution" means any institution as defined under ORS 706.005(19) which is authorized under applicable state and federal laws to offer client trust accounts established pursuant to ORS 59.935 and to accept deposits to such accounts in Oregon.
- (4) "Trust Account" means an account held in a federally insured financial institution as defined in ORS 706.005(19), into which Trust Funds, as defined pursuant to section (6) of this rule, are deposited.
- (5) "Banking Day" includes each day a financial institution is required to be open for the normal conduct of its business, but does not include Saturday, Sunday, or any holiday as defined in ORS 707.430.
- (6) "Trust Funds" means those funds deposited into a trust account or with a neutral escrow depository. Trust funds shall include, but are not limited to:
  - (a) All funds received by a licensee or persons authorized to act on behalf of the licensee from or on behalf of a client for payment of services to be provided by persons other than the licensee in connection with processing, arranging, or

making a mortgage banking loan or mortgage loan;

(b) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a borrower for payment of principal, interest or taxes on a mortgage banking loan or mortgage loan, but shall not include such funds where the licensee and the lender have an agreement providing for the disposition of such funds, and the financial statements of the licensee are audited on an annual basis in accordance with generally accepted auditing standards; and

(c) All funds received by a licensee or persons authorized to act on behalf of a licensee from or on behalf of a client for payment of services to be provided by a licensee in connection with processing, arranging, or making a mortgage banking loan or mortgage loan by the licensee, except for those funds received by a licensee on a nonrefundable basis under the provisions of OAR 441-875-0030(9).

(7) "Neutral escrow depository" means the deposit of money with an escrow agent licensed under ORS 696.511, and may include a financial institution as defined in this section.

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## **441-875-0020**

### **Branch Office Trust Accounts**

Compliance with the provisions of OAR 441-875-0020 through 441-875-0040 does not relieve any person of any other duties and liabilities under ORS 59.840 through 59.960, Oregon Administrative Rules, the Oregon Securities Law found in ORS Chapter 59 or any other provisions of law:

(1) Branch offices shall maintain a separate trust account if:

(a) The main office of the licensee does not maintain a trust account or deposit funds into a neutral escrow depository on behalf of the branch offices' clients; or

(b) The main office of the licensee is not located within the State of Oregon.

(2) If the branch office maintains a trust account separate from the main office, the licensee shall be responsible for supervision of the branch office trust account to ensure compliance with the provisions of OAR 441-875-0030 and ORS 59.935 and 59.940.

(3) If the branch office places funds into a neutral escrow depository, the licensee shall be responsible for supervision of the branch office activities to ensure compliance with the provisions of OAR 441-875-0030 and ORS 59.935(1).

(4) Branch offices may maintain a trust account separate from any trust account maintained by the main office provided the branch office complies with all provisions under OAR 441-875-0030 and ORS 59.935(4).

(5) Examination of the branch office books and records relating to the trust accounts may be made at such time as the Director or his authorized representative may choose.

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

**441-875-0030****Manner of Deposit**

A licensee shall deposit all trust funds received from a client into the trust account or neutral escrow depository and shall keep such funds in the trust account or neutral escrow depository until:

(1) In the case of a neutral escrow depository, the written escrow instructions prepared pursuant to the provisions of OAR 441-875-0040(3) and agreed to by all parties have been fulfilled; or

(2) In the case of a trust account, the instructions for disbursement of trust funds have been fulfilled as contained in:

(a) The loan application form; or

(b) A separate fee agreement, if any.

(3) A licensee shall not commingle any monies received from a client for deposit into a trust account with personal funds of the licensee. For purposes of OAR 441-875-0010 through 441-875-0040, the following shall not constitute commingling of trust funds with personal funds provided the funds are removed from the trust account within 30 days:

(a) Earned, but untransferred interest income accruing to the licensee pursuant to a written agreement with the client;

(b) Earned, but untransferred fees due the licensee.

(4) Every deposit into a trust account shall be made with deposit slips or other evidence of deposit identifying each transaction by a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a licensee has attached a copy of the client's check to the deposit slips.

(5) Every deposit into a neutral escrow depository shall be accompanied by a letter of transmittal which shall include a written notation of the file identification assigned to the transaction on whose behalf the deposit is made. Compliance with this rule may be satisfied when a licensee has attached a copy of the client's check to the letter of transmittal.

(6) All customer securities must be held in trust and kept in a secure depository. The securities must be held in such a manner that they will be free from claims, levy, or attachment by creditors of the licensee.

(7) All funds, whether in the form of money, checks, drafts, or warrants belonging to others and accepted by any licensee engaged in professional activity shall be deposited prior to the close of business of the third banking day following the date of the receipt of the funds into a trust account or neutral escrow depository established by the licensee. The licensee shall account for all funds received.

(8) Every licensee which requires a residential loan client to pay an amount for services prior to the time that the services are rendered may maintain a separate trust account in this state for prepayments and shall keep prepayment funds subject to refund in the trust account until the services are performed according to the provisions contained in OAR 441-875-0040(5) and (6), or the loan is rejected.

(9) In the event that the licensee accepts fees in advance of completing professional services, or accepts fees paid as a retainer to secure the availability of the licensee, or accepts a consulting fee for professional services, the fees shall be refundable and are trust funds unless the licensee provides written notice to the client prior to or at the time of receipt of the fees that such fees are not refundable. A record of this written notice to a client shall be maintained in the client file pursuant to the provisions of OAR 441-865-0020 through 441-865-0090.

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

## 441-875-0040

### Financial Practices; Manner of Disbursement

(1) In addition to those books and records required under ORS 59.840 through 59.960 and OAR 441-865-0010 through 441-865-0090, a licensee shall maintain books and records for each trust account in accordance with this rule:

(a) Licensees must reconcile at least monthly all trust accounts:

(A) The reconciled bank balance of the trust account must equal the sum of the balances in the individual owner's ledger accounts and also must equal the balance shown in the check register or the journal of receipts and disbursements for the trust account;

(B) The licensee must sign and date the reconciliation upon its completion.

(b) Each licensee shall set up and maintain a subsidiary ledger for each trust account showing the receipts and disbursements and maintaining a running total of every transaction pertaining to the trust account.

(2) The licensees' offices, places of business, books, records, accounts, files and papers relating to the trust account shall be available for examination by the Director pursuant to OAR 441-865-0010 through 441-865-0090.

(3) If funds are placed in a neutral escrow depository pursuant to the written agreement required by ORS 59.935(1), the agreement shall provide authorization for the Director or an authorized representative of the Director to examine the offices, places of business, books, records, accounts, files and papers relating to the client funds.

(4) Funds disbursed from a trust account shall be by checks which are prenumbered and bear the words "**Trust Account**" upon the face of the check. A mortgage banker or mortgage broker shall account for all checks, including voided checks, as part of the books and records maintained by the mortgage banker or mortgage broker.

(5) In the case of residential loan applications, escrow instructions and instructions for trust fund disbursement of licensee fees shall provide that no trust funds may be disbursed to the licensee until the licensee has provided the following minimum services and disclosures:

(a) A good faith estimate;

(b) A completed loan application;

(c) If prepared, a fee agreement;

(d) **HUD guide(s)** for home buyers;

(e) The adjustable rate mortgage booklet as prepared by the Federal Reserve Board, if applicable;

(f) Truth in Lending Act disclosures.

(6) In the event that the licensee accepts fees in advance of completing professional services, or accepts fees paid as a retainer to secure the availability of the licensee, or accepts a consulting fee for professional services, and such fees are subject to refund under the provisions of these rules, such amounts may be withdrawn from the trust account for the benefit of the licensee only when actually expended for the benefit of the client or five days after notice of the proposed withdrawal has been mailed to the client.

(7) Every licensee must maintain a record listing all persons employed by that firm who have signatory authority to disburse funds held in the trust account and the date such authority begins and ends.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS 59.900 & 59.935

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 885**

**CANCELLATION OF LICENSE**

**441-885-0010**

**Cancellation License for Mortgage Bankers and Mortgage Brokers**

(1) The procedure for cancellation of a license for failure to maintain a surety bond or letter of credit as required by ORS 59.850 is:

(a) Upon notification from the surety of notice of intent to cancel the surety bond or upon notification from the financial institution of notice of intent to cancel the letter of credit, the Director shall send written notice to the licensee. This notice shall be sent by certified mail within three business days of receipt of notification from the surety or financial institution. Failure to send the notice within three business days will not preclude cancellation under subsection (1)(b) of this rule;

(b) Cancellation of the license will occur if an effective bond or letter of credit is not received by 5 p.m. Pacific Time seven business days after the bond or letter of credit cancellation date. The cancellation of the license shall be effective as of the bond or letter of credit cancellation date;

(c) An effective bond or letter of credit is one that commences no later than the cancellation date of the previous bond or letter of credit.

(2) A person whose license has been cancelled may obtain a license in Oregon by submitting a new application.

(3) Upon cancellation of a mortgage banker or mortgage broker license all rights under the license are terminated, except that the Director shall retain jurisdiction to investigate the professional activities pursuant to ORS 59.880.

Stat. Auth.: ORS 59.850

Stats. Implemented: ORS 59.875

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 900**

**PROCEDURAL RULES**

**441-900-0000**

**Notice**

Before adoption, amendment, or repeal of any rule, the Debt Consolidating Program shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action;
- (2) By mailing a copy of the notice to persons on the Debt Consolidating Program mailing list established under ORS 183.335(7);
- (3) By mailing or furnishing a copy of the notice to:
  - (a) The United Press International;
  - (b) The Associated Press;
  - (c) The Oregon Collector's Association;
  - (d) Associated Western Consumer Credit Counseling Services, Inc.;
  - (e) Capitol Press Room.

Stat. Auth: ORS Ch. 697

Stats. Implemented: ORS 183.335

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; DC 11-1984, f. & ef. 4-17-84; Renumbered from 814-105-0000

## 441-900-0005

### Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, adopted on January 27, 1986, are adopted as the rules of procedure for the Debt Consolidating Program.

Stat. Auth: ORS Ch. 697

Stats. Implemented: ORS 183.341

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-105-0005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, DIVISION OF FINANCE  
AND CORPORATE SECURITIES**

**DIVISION 910**

**REGISTRATION OF DEBT CONSOLIDATING BUSINESSES**

**441-910-0000**

**Definitions**

The definitions of terms used in ORS 697.602 to 697.992 and the rules of this OAR Chapter 441, Divisions 900 and 910, are:

- (1) "Felony" -- A crime declared a felony by statute because of the punishment imposed.
- (2) "Misdemeanor" -- a crime less serious than a felony.
- (3) "Fraud" -- Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.
- (4) "Trust Account" -- Bank checking account designated "client trust account" in which all funds received or handled by the debt consolidating agency on behalf of the agency's clients are deposited.
- (5) "Non-Profit Debt Consolidating Agency" -- An agency incorporated under subsection (c) of **Section 501 of the Internal Revenue Code of 1954**, as amended and in effect on April 1, 1983.
- (6) "For-profit debt consolidating agency" -- All debt consolidating agencies that are not "non-profit".
- (7) "Agent of Business" -- A person who attempts to obtain clients for a debt consolidating agency or payments from a client of a debt consolidating agency.
- (8) "Registered Agent" -- A person who is an agent of the agency of the agency for purposes of accepting legal process.
- (9) "Solicits" -- Attempts to obtain clients or payments from a client of a debt consolidating agency.
- (10) "Assignment of Wages" -- The transfer of wages to be used for the benefit of creditors.
- (11) "Employee" -- Individual working for salary or wages.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of Finance and Corporate Securities.]

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.632

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0000

## **Registration**

### **441-910-0010**

#### **Certificate of Registration**

- (1) The Department of Insurance and Finance may issue a certificate of registration to a debt consolidating business upon receipt of a completed application and required fee.
- (2) Application for registration shall be on forms provided by the Debt Consolidating Program and shall contain:
  - (a) The information set forth in ORS 697.632(1) (a) through (f);
  - (b) Telephone numbers of the business and all offices;
  - (c) All office locations;
  - (d) Name of trust account, account number, and name and address of financial institution where account is located;
  - (e) If registration is for a non-profit debt consolidating business, copy of \$10,000 fidelity bond; or if registration is for a for-profit debt consolidating business, copy of \$10,000 surety bond or deposit payable to Department of Insurance and Finance.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

### **441-910-0020**

#### **Duration of Registration**

- (1) All registrations shall be issued on the date all registration qualifications are met and be valid for one year.
- (2) If the registration is issued after the first day of a month, the expiration date will be the last day of the month in which the certificate of registration was issued.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.632

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; DC 17-1984, f. & ef. 5-1-84; Renumbered from 814-106-0010

## **441-910-0030**

### **Renewal**

A certificate of registration shall be renewed on or before the renewal date by payment of the required fee and submission of a current list of agents including desk names.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.632(2)

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0015; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-910-0040**

### **Assumed Business Name**

Before registration or renewal of registration of a debt consolidating business:

(1) An individual using an assumed business name shall be registered with the Corporation Division of the Secretary of State.

(2) A corporation shall be registered to do business in Oregon with the Secretary of State.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.632(1)

Hist.: DC 2-1984, f. & ef. 1-16-84; DC 11-1984, f. & ef. 4-17-84; Renumbered from 814-106-0025; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-910-0050**

### **Update Filings**

At least ten days prior to a change of ownership, address, bond or deposit information, or information relating to the trust account, the debt consolidating business shall notify the Debt Consolidating Program in writing of the changes.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.632(2)

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0030; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-910-0060**

### **Bonds**

(1) A non-profit debt consolidating business shall file a \$10,000 fidelity bond payable to the business.

(2) A for-profit debt consolidating business shall file a \$10,000 surety bond or deposit payable to the Department of Insurance and Finance, Debt Consolidating Program.

(3) Bonds shall be made out as follows:

(a) If the business is a sole proprietorship, the bond shall be in the name of the individual;

(b) If the sole proprietorship has an assumed business name, the bond shall be in the individual's name and the business name may also be listed;

(c) If the business is a partnership, the bond shall be in all partners' names and business name;

(d) If the business is a corporation, the bond shall be in the name of the corporation.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.642

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0035; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **Business Activities**

### **441-910-0070**

#### **Records Retention**

(1) Records of moneys collected from clients and disbursed to creditors shall be maintained three years from the date of the last entry.

(2) Duplicates or partial records of those entries shall be maintained for two years from the date of last entry.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.672

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0040

### **441-910-0080**

#### **Joint Trust Accounts**

A trust account may not be used jointly as a trust account and operating account.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.682

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0045

### **441-910-0090**

## **Voluntary Contributions**

- (1) A debt consolidating business may not withhold a "voluntary contribution" from the amount remitted to a client's creditor without first giving the creditor notice in writing.
- (2) An agency may not withhold more than 15 percent of a payment to a creditor as a "voluntary contribution".
- (3) Any change in the percentage or termination of the "voluntary contribution" must be signed by the creditor.
- (4) A creditor's decision to make or not to make a "voluntary contribution" shall have no bearing on the priority of that creditor's accounts or the amount paid to that creditor.
- (5) A creditor shall be informed of items in sections (1) through (4) of this rule before authorizing the contribution.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.692(3)

Hist.: DC 2-1984, f. & ef. 1-16-84; DC 11-1984, f. & ef. 4-17-84; Renumbered from 814-106-0050

## **441-910-0100**

### **Audit Charges**

- (1) Audit charges shall be paid upon receipt of the invoice.
- (2) The rate of charge payable by a debt consolidation agency is \$60 an hour for each person used in performance of the audit conducted under ORS 697.732.
- (3) Notwithstanding section (2) of this rule:
  - (a) If a person from the Debt Consolidation Program is required to travel out of state to perform the work described by section (2) of this rule, the rate of charge is \$60 per hour plus cost to the Program of travel and subsistence for each such person;
  - (b) If the work described in section (2) of this rule is performed by a consultant hired by contract for the particular work, the charge payable by the debt consolidation agency is the actual cost to the Program of the contract consultant.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.732(1)

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0055; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

## **441-910-0110**

### **Claims**

- (1) Persons having a claim against a debt consolidating business shall notify the Department of Insurance and Finance by mail. The information shall include:
  - (a) Name, address, and telephone number of the claimant;

- (b) Name, address, and telephone number of the debt consolidating agency;
  - (c) Amount of money involved;
  - (d) A brief statement of the nature of the claim;
  - (e) A copy of the contract with relevant documents attached.
- (2) If a court judgment is the basis for the claim, a copy of the judgment shall be attached.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.782

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0060; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

#### **441-910-0120**

##### **Response to Claims**

- (1) A copy of a claim received by the Department of Insurance and Finance shall be sent to the debt consolidating business.
- (2) The debt consolidating business shall respond in writing to the Department of Insurance and Finance within 15 working days.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.732(1)

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0065; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88

#### **441-910-0130**

##### **Civil Penalties**

Civil penalties shall be \$400 for the first offense and \$1,000 for each subsequent offense.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.832

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0070

#### **441-910-0140**

##### **Fees**

Fees established for the program are:

- (1) Initial registration, \$75.

(2) Registration renewal, \$75.

Stat. Auth.: ORS Ch. 697

Stats. Implemented: ORS 697.832

Hist.: DC 16-1983(Temp), f. & ef. 6-28-83; DC 23-1983(Temp), f. 10-14-83, ef. 11-1-83; DC 27-1983(Temp), f. & ef. 12-2-83; DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0075

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