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<b>441-865-0020</b>	Financial Records
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#### DISHONEST, FRAUDULENT, UNFAIR AND UNETHICAL PRACTICES

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**Chapter 441 Department of Consumer and Business Services, Division of Finance and Corporate Securities**

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<b>441-870-0030</b>	Borrower Transactions
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**DIVISION 930****PREARRANGEMENT AND PRECONSTRUCTION PLANS**

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<b>441-930-0020</b>	Master Trustees
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**Certified Providers and Registered Master Trustees**

<b>441-930-0270</b>	Fees Assessed to Certified Providers and Registered Master Trustees
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<b>441-930-0290</b>	Unprofessional Conduct
<b>441-930-0300</b>	Notice of Complaint
<b>441-930-0310</b>	Revocation, Suspension and Denial of Certificate or Registration
<b>441-930-0320</b>	Notice Requirements
<b>441-930-0330</b>	Records to be Retained; Retention
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<b>441-930-0350</b>	Funeral and Cemetery Consumer Protection Trust Fund

**Endowment Care Cemeteries**

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**DIVISION 950****REGISTRY OF INTERNATIONAL  
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<b>441-950-0010</b>	Definitions
<b>441-950-0020</b>	Registry of International Trade Consultants
<b>441-950-0030</b>	Application for Listing
<b>441-950-0040</b>	Continuation of Listing
<b>441-950-0050</b>	Removal from the Registry

**DIVISION 1****PROCEDURAL RULES****441-001-0005  
Model Rules of Procedure**

The Director adopts by reference, for all programs administered by the Division of Finance and Corporate Securities, the Attorney General's Model Rules of Procedure as published in the Oregon

Attorney General's Administrative Law Manual dated January 15, 2004.

Stat. Auth.: 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260  
Stats. Implemented: 183.341

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 2-2004, f. & cert. ef. 8-5-04

#### 441-001-0010

##### Notice of Rulemaking

(1) Except when acting in an emergency to adopt a temporary rule in accordance with ORS 183.335(5), before any proposed adoption, amendment, or repeal of an administrative rule in this chapter or in chapter 440, division 35, 200 or 300, the Director will give prior notice as required in ORS 183.335(1).

(2) In addition to the notice described in section (1) of this rule, depending upon the subject matter of the proposal, notice may be given to licensed entities, organizations affiliated with regulated industries, publishers of industry publications, and the media.

(3) Any person receiving notice of rulemaking under this rule may request notice be sent to that person electronically.

Stat. Auth.: 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260  
Stats. Implemented: 183.335

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-001-0020

##### Mailing List

(1) The following documents will be mailed to persons who request placement on the mailing list for the Division of Finance and Corporate Securities and pay an initial fee of \$30 and a biennial renewal fee of \$30 on or before January 1 of each odd-numbered year thereafter:

- (a) Proposals to adopt, amend, or repeal rules;
- (b) Adopted rules;
- (c) Legislation initiated by the Director (initial bill only); and
- (d) Enacted legislation affecting 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 described in OAR 441-001-0010(2);
- (b) Governmental agencies;
- (c) Persons requesting placement on the mailing list who elect to receive documents electronically only; or
- (e) 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.: 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260  
Stats. Implemented: 183.335

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-001-0030

##### Contested Case Proceedings

(1) Except for appeals to courts of appropriate jurisdiction from decisions of the Director under ORS 707.080, 707.150 or 707.180, a person shall be considered as timely requesting a contested case hearing for any program administered by the Division of Finance and Corporate Securities if the written request for hearing is received by the Director within the time specified in the notice or proposed order served on the person. The time specified in the notice or proposed order shall be as stated in the applicable program's statutes or if none, in ORS Chapter 183.

(2) A contested case notice, in addition to the notice requirements of ORS 183.415(2), may include a statement that the record of the proceeding to date including information in the division file automatically becomes part of the contested case record upon default for the purpose of proving a prima facie case.

(3) No later than 60 days after the expiration of the time for requesting a hearing, a party may request a hearing by filing a request and an 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.

(4) If the Director allows the late request, the Director shall refer the matter to the Office of Administrative Hearings. This referral does not stay the order which became final on the default. If the late request is denied, the Director shall enter an order setting forth the reasons for such denial.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: ORS 59.295, 59.905, 97.948, 183.090, 183.430, 183.435, 192.845, 706.580, 707.080, 707.150, 707.180, 717.235, 717.265, 725.235

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-001-0040

##### Requests for Opinions and Interpretations

(1) 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, or requesting interpretation or advice on the applicability of any law administered by the Division of Finance and Corporate Securities.

(2) The intent of this rule is to formalize the opinion procedures so requests for opinions can be handled expeditiously.

(3) All requests for opinions and interpretations must:

(a) Be in writing, mailed or delivered to the Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street N.E., Room 410, PO Box 14480, Salem, Oregon 97309-0405 or faxed to 503-947-7862;

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

(c) Contain an analysis of the law applicable to the facts.

(4) Responses to requests for opinion 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.

(5) Responses of the Director, which do not constitute a rule or order, and are not binding on any court or third party:

(a) Will only be in writing and will be based upon representations made.

(b) May be revised if additional facts or circumstances exist which warrant a change.

(c) Will be declined where litigation is pending or is threatened.

(d) Will be declined where the questions are asked after the fact.

(e) Will be declined where significant additional research is required.

(f) Are binding on the Director and the requester on the state of facts presented unless altered or set aside by a court.

(6) Any party dissatisfied with an opinion or interpretation may petition the Director for a declaratory ruling pursuant to ORS 183.410.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: ORS 183.310

Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-001-0050

##### Refund of Monies Paid

(1) This rule pursuant to ORS 293.445 provides for the refund of monies paid to the Department of Consumer and Business Services to which the Department has no legal interest, or in excess of the amount legally due when paid for any program administered by the Division of Finance and Corporate Securities.

(2) Refunds exceeding \$25 shall be made without a written request. If the refund owed is \$25 or less, within 3 years of making the payment the person who paid the money or that person's legal representative must make a written request for the refund.

(3) Fees paid for an application that is subsequently withdrawn, abandoned, or denied shall not be refunded.

Stat. Auth.: ORS 59.285, 59.900, 192.845, 645.205, 646.396, 650.050, 697.085, 697.632, 705.730, 706.790, 717.310, 723.102, 725.505, 725.625, 726.260

Stats. Implemented: ORS 293.445  
Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

**DIVISION 2**  
**PUBLIC RECORDS**

**441-002-0005**

**Applicability of Rules**

OAR 441-002-0005 to 441-002-0040 apply to all public records of the Division of Finance and Corporate Securities of the Department of Consumer and Business Services.

Stat. Auth.: ORS 705.135  
Stats. Implemented: ORS 192.430  
Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

**441-002-0010**

**Access to Records**

(1) The Director, in carrying out responsibilities as custodian of public records under statutes administered by the Division of Finance and Corporate Securities, 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 Division of Finance and Corporate Securities may be inspected or examined during normal working days and hours. 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, and 722.419.

Stat. Auth.: ORS 705.135  
Stats. Implemented: ORS 192.430  
Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

**441-002-0020**

**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 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 705.135  
Stats. Implemented: ORS 192.440  
Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

**441-002-0030**

**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 to public libraries, public educational institutions or to 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 705.135

Stats. Implemented: ORS 192.440  
Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

**441-002-0040**

**Fees for Inspection and Copies of Public Records**

(1) The Director sets the following fees for copies of public records, including labor costs in producing the copies:

(a) Photocopies made on a standard office copy machine, 25 cents per sheet;

(b) Microfilm, 25 cents per copy;

(c) Existing mailing list printed on labels, \$1.25 per sheet of 20 labels;

(d) Video tape, \$15 per 2-hour tape;

(e) Audio cassette tape, \$6 per 120 minute cassette;

(f) Records produced on computer disk, \$3.50 per disk;

(g) Records produced on CD-rom disk, \$6 per disk; and

(h) Electronic records printed on standard office printer, 10 cents per sheet.

(2) The Director sets the following fees for staff labor, including time spent locating, compiling, reviewing for exempt materials, summarizing if requested, or supervising the requester's inspection of the records:

(a) \$20 per hour for secretarial/clerical staff; and

(b) \$35 per hour for professional/technical staff.

(3) The Director sets the following charges for other services:

(a) Certification of documents, \$5 per document in addition to copying or staff labor listed above;

(b) For computerized records compiled in-house or by the Department of Administrative Services, a \$44 job set-up fee, one-half cent (\$.005) per record on output, staff time at rates set in section (2) of this rule to write the program, plus the actual costs for the output medium, such as tape or disk, and shipping;

(c) Actual charges for compilation of records processed by other external parties; and

(d) Actual long distance charges for records transmitted by fax.

(4) There shall be a minimum \$5 fee for each public records request, unless the fee is waived by the Director.

Stat. Auth.: ORS 705.135  
Stats. Implemented: ORS 192.440  
Hist.: FCS 3-2003, f. 12-30-03 cert. ef. 1-1-04

**DIVISION 5**

**441-005-0010**

**Application For Certificate Of Compliance**

(1) To apply for a certificate from the Director to indicate that use of a requested name or intended activity is in compliance with the Bank Act and ORS Chapters 59, 646, 705, 717, 722, 725 and 726, a company shall submit:

(a) A letter request to the Director describing the company's business,

(b) The names, dates of birth and home addresses of all executive officers, directors and principals of the company, or persons holding similar positions; and

(c) Supporting documentation evidencing the company's organization as a financial institution, including but not limited to:

(A) The company's business plan;

(B) A copy of the charter or comparable documents from the jurisdiction where the company is organized, if applicable; and

(C) The articles of incorporation or proposed articles of incorporation or similar documents of organization.

(2) Within 10 business days from the receipt of the written request, the Director will review the request. Upon review, the Director will either issue a certificate to the Secretary of State and company authorizing the registration of the name for the company, request additional information from the company, or send a written denial of the request to the company.

(3) If the Director requests additional information from the company, the company shall have 30 days to submit additional information. If the company fails to submit the additional information within 30 days, the Director may deny the request for certification.



(4) If the Director denies a request for certification, the company shall have the right to request a hearing, which will be conducted pursuant to ORS Chapter 183.

(5) In lieu of the requirements under 1(b) and (c) of this rule, state or federally chartered financial institutions may comply with (1)(a) and supporting documentation required under 1(c)(B) unless the Director determines after receiving this documentation that full compliance with 1(a) through (c) is required.

Stat. Auth.: ORS 705.635

Stats. Implemented: ORS 705.635

Hist.: DO 5-2001, f. 12-24-01, cert. ef. 1-1-02; Renumbered from 440-200-0020;

FCS 3-2004, f. & cert. ef. 9-30-04

## 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 69.285 & ORS 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 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

#### 441-011-0040

##### Financial Statements

(1) All financial statements required by any rule or official form of the Department of Consumer and Business Services, Division of Finance and Corporate Securities, 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 consistent with carrying out the provisions of the Oregon Securities Law and in the public interest.

Stat. Auth.: ORS 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; FCS 7-2000, f. & cert. ef. 6-2-00

## DIVISION 25

### SECURITIES EXEMPT FROM REGISTRATION

#### 441-025-0005

##### Self-Executing Registration Exemptions

(1) The securities listed in ORS 59.025 are exempt from registration or notice filing requirements. Sales of securities listed in ORS 59.025 may only be effected through licensed persons, unless a person is otherwise exempted by statute or rule. No filing or fee is required to utilize any registration exemption in ORS 59.025.

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025, ORS 59.195 & ORS 59.275

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

#### 441-025-0010

##### Exchange Exemption

The following exchanges are recognized by the Director for the purpose of the exemption from registration in section (4) of ORS 59.025:

(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) & ORS 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; FCS 7-2000; f. & cert. ef. 6-2-00

DIVISION 35

SECURITIES TRANSACTIONS  
 EXEMPT FROM REGISTRATION

441-025-0020

Manual Exemption

Securities maintaining 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.
- (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; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01

441-025-0030

Employee Benefit Plans

The terms of an employee benefit plan are fair, just, and equitable for the purposes of ORS 59.025(12)(b) if it is a plan of an employee-owned enterprise.

Stat. Auth.: ORS 59.285  
 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; FCS 7-2000; f. & cert. ef. 6-2-00

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: Publications referenced are available from the agency.]  
 Stat. Auth.: ORS 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

441-025-0050

Additional Exempt Employee Benefit Plans

Pursuant to ORS 59.025(14), 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: Publications referenced are available from the agency.]  
 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; FCS 7-2000; f. & cert. ef. 6-2-00

441-035-0005

Self-Executing Transaction Exemptions

(1) Except for ORS 59.035(11) and OAR 441-035-0045, exemptions available pursuant to ORS 59.035 are self-executing. No filing or fee is required to utilize any exemption in ORS 59.035, except for ORS 59.035(11) and OAR 441-035-0045.

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285  
 Stats. Implemented: ORS 59.035, ORS 59.195 & ORS 59.275  
 Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

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: Publications referenced are available from the agency.]  
 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) & ORS 59.285

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

Stat. Auth.: ORS 59.035(7), ORS 59.045(1), ORS 59.045(2) & ORS 59.350(2)  
Stats. Implemented: ORS 59.035(7), ORS 59.045 & ORS 59.350(2)  
Hist.: FCS 7-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-037-0037;  
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**

Pursuant to ORS 59.035(10)(c), the Mergent, Standard and Poor's, and Fitch Investors Service securities manuals are approved for purposes of the exemption granted under subsection (10) 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; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01

#### **441-035-0040**

##### **NASDAQ Exemption**

Pursuant to subsection (10)(d) of ORS 59.035, the National Association of Securities Dealers Automated Quotations, NASDAQ, is approved for purposes of the exemption granted under section (10) of ORS 59.035, 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; FCS 7-2000;  
f. & cert. ef. 6-2-00

#### **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) The minimum registration fee as set in OAR 441-065-0001;

(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 as set in OAR 441-175-0002 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; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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

#### 441-035-0060

##### Offers of Securities on the Internet

(1) Scope of Rule. This rule applies to any offer for sale of securities placed on the Internet, except for those offers for sale from Oregon. As used in this section, the term “Internet” is to be construed

liberally to include all proprietary or common carrier electronic systems or similar media.

(2) Pursuant to ORS 59.035(15), an offer for sale of securities placed on the Internet by, or on behalf of, an issuer, involving securities that will not be sold in Oregon, shall be exempt from the notice filing requirements of ORS 59.049(1) and (2), and the registration requirements of ORS 59.055, if the following conditions are observed:

(a) The Internet offer for sale prominently and conspicuously indicates, on a page that must be viewed by readers before reading any portion of the offering document or the subscription agreement, either that the securities are not being offered to persons in Oregon, or in which specific states, other than Oregon, the securities are being offered;

(b) The offer for sale is not otherwise specifically directed to any person in Oregon by, or on behalf of, the issuer; and

(c) No sales of the issuer’s securities are made in Oregon as a direct or indirect result of the Internet offer for sale.

(3) Any issuer who places an offer for sale of securities on the Internet in accordance with this section may subsequently sell the securities to persons in Oregon:

(a) Through filing a notice of the offering under ORS 59.049(1) or (2), or registration of the offering under ORS 59.065 and the delivery of a final prospectus to the Oregon investor prior to sale;

(b) Pursuant to a transaction exemption which permits general solicitation; or

(c) Pursuant to ORS 59.035(5), 59.035(12), or OAR 441-035-0050 provided that the sale transaction is executed no earlier than six months after the final contact between the issuer and the prospective Oregon investor.

Stat. Auth.: ORS 59.285; 59.035(15)

Stats. Implemented: ORS 59.035

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

## 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 off-setting 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

## DIVISION 49

### NOTICE FILINGS FOR FEDERAL COVERED SECURITIES

#### 441-049-1001

##### Fees for Federal Covered Securities Notice Filings

Pursuant to ORS 59.049, the Director sets the following fees for notice filings for federal covered securities:

(1) For an investment company, other than a unit investment trust, an initial and renewal notice filing fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(2) For a unit investment trust notice filing, an initial fee of \$270 per portfolio and a renewal fee of \$225 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(3) For a notice filing for offerings to qualified purchasers, or of federally exempt securities or federally exempt transactions pursuant to section 18(b)(3) or (4), other than section 18(b)(4)(D), of the Securities Act of 1933, as amended, initial and renewal fees of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,025.

(4) For a Regulation D Rule 506 offering notice filing, a fee of \$225. No renewal notice filing or fee is required.

Stat. Auth.: ORS 59.049

Stats. Implemented: ORS 59.049

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-049-1011

##### Scope and Definitions

(1)(a) Scope of rule. The Notice Filing Rules (OAR 441-049-1011 to 441-049-1051) provide Oregon procedures for notice filings and renewals under ORS 59.049.

(b) Application of Notice Filing Rules:

(A) An offering under the Notice Filing Rules does not have to comply with OAR 441 division 065 Registration of Securities or 441 division 070 Renewal of Securities Registrations; and

(B) An effective offering under former OAR 441-025-0045 or an effective registered offering that qualifies for the Notice Filing Rules shall become subject to the Notice Filing Rules when the person that previously filed under former OAR 441-025-0045 or securities offering registrant files under the notice filing renewal procedures in OAR 441-049-1021(6).

(2) Definitions. As used in the Notice Filing Rules:

(a) "Investment company notice filing" means a filing by a mutual fund, unit investment trust or other investment company, that covers a security that would be a federal covered security pursuant to section 18(b)(2) of the Securities Act of 1933, as amended;

(b) "NASAA" means the North American Securities Administrators Association Inc.;

(c) "NASAA Form NF" means the Uniform Investment Company Notice Filing form adopted by the NASAA;

(d) "Notice Filing Rules" means the rules in OAR 441-049-1011 to 441-049-1051;

(e) "Offering to qualified purchaser," "federally exempt security" or "federally exempt transactions" means offerings of federal covered securities that are subject to section 18(b)(3) or 18(b)(4) of the Securities Act of 1933, as amended, but does not include section 18(b)(4)(D) of that Act;

(f) "Rule 506 offering" means an offering of federal covered securities that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended;

(g) "SEC" means the Securities and Exchange Commission; and

(h) "SEC Form D" means "Form D; Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption" including Part E and the Appendix as adopted by the SEC.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.049 & ORS 59.085

Stats. Implemented: ORS 59.049

Hist.: FCS 3-1998, f. & cert. ef. 7-2-98

#### 441-049-1021

##### General Provisions Applicable to Notice Filing Rules

(1) Address. All notice filings and payment of fees under the Notice Filing Rules shall be directed to the State of Oregon, Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street NE Room 410, Salem, Oregon 97301-3881. At such time as filings can be received electronically by the Director, filings may be made electronically.

(2) Fees. Filing fees are set out in OAR 441-049-1001.

(3) Additional information. Notwithstanding the filing requirements in the Notice Filing Rules, the Director may request additional information, documentation or both. The request shall not exceed the information or documentation required by the SEC to be filed in connection with that offering.

(4) Salespersons. No information or documentation need be filed concerning broker-dealers or salespersons other than the information to be supplied on Form D or Form NF. No license is required for persons not otherwise licensed in Oregon as broker-dealers or salespersons who are engaged in executing transactions in federal covered securities.

(5) Initial Filings. Notice and fees submitted as an initial filing shall become effective on the later of the date the notice is received by the Director or date specified by the notice filer in accordance with 59.049(1), (2), or (3). The notice for Regulation D Rule 506 filings shall be indefinite. The notice for all other federal covered securities shall continue for one year from the effective date. The notice may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice.

(6) Renewal Filings:

(a) Notice form:

(A) A person seeking renewal shall provide the same form and materials required for the initial filing or most recent renewal. The renewal, if received prior to the annual anniversary date of the initial filing, shall become effective on the anniversary date and shall continue for one year from that date. The renewal may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice;

(B) Notices submitted for renewals and received after the anniversary date shall become effective on the date received. A late renewal shall be accompanied by a letter from or on behalf of the notice filer indicating whether any sales were made in this state after the expiration date. The renewal may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice. A late renewal may be treated as an initial filing.

(b) Aggregate offering amount. A renewal notice may be submitted for any aggregate offering amount of securities provided appropriate fees are submitted. A renewal is not limited to unsold portions of previously noticed aggregate offering amounts.

(c) Fees. A person seeking renewal shall submit the appropriate fees set out in OAR 441-049-1001.

(7) Acknowledgment of filing. Upon receipt of an initial filing or renewal, the Director shall provide written acknowledgment of the filing to the person submitting the request for the filing. An inadvertent failure by the Director to acknowledge the filing shall not invalidate the filing.

(8) Options, warrants or similar rights to purchase securities. Options, warrants or similar rights to purchase securities that are part of an offering under the Notice Filing Rules, constitute a continuous

offering of the underlying securities during the exercise period and require the notice filing to be continually renewed as relevant. Disclosure materials shall be kept continuously current throughout the exercise period.

Stat. Auth.: ORS 59.049 & 59.285  
Stats. Implemented: ORS 59.049  
Hist.: Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-049-1031

##### Investment Company Notice Filing

(1) An investment company notice filing shall comply with this rule.

(2) The notice required by ORS 59.049 shall:

(a) Identify the portfolios offered through the same SEC registration; and

(b) Subject to section (3) of this rule, be filed on NASAA Form NF.

(3) In lieu of the notice provided in section (2) of this rule, if the issuer follows ORS 59.049(1), and files a copy of its registration statement as filed with the SEC, the issuer shall advise the Director of the number of portfolios covered by the registration statement and pay fees as provided in OAR 441-049-1001.

Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-049-1041

##### Offering to Qualified Purchaser, Federally Exempt Securities and Federally Exempt Transactions

An issuer offering a security that is a covered security under section 18(b)(3) or (4), other than 18(b)(4)(D), of the Securities Act of 1933, as amended, shall:

(1) File a written notice of such offering identifying the issuer and seller if other than the issuer; and

(2) Pay a fee as set in OAR 441-049-1001.

Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-049-1051

##### Rule 506 Offerings

A person offering a covered security under section 18(b)(4)(D) shall:

(1) File a notice on SEC Form D not later than 15 days after the first sale of securities subject to the notice in Oregon; and

(2) Pay a fee as set in OAR 441-049-1001.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## DIVISION 65

### REGISTRATION OF SECURITIES

#### 441-065-0001

##### Fees for Registration of Securities

Pursuant to ORS 59.065, the Director sets the following fees for registration of securities:

(1) For initial registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(2) For renewal of a current registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(3) To increase the aggregate offering amount of a current registration, a fee calculated for registration of the desired aggregate offering amount less fees previously paid for the current registration, but not less than \$100. Amending the aggregate offering amount does not extend the expiration date of the current registration.

Stat. Auth.: ORS 59.065  
Stats. Implemented: ORS 59.065, 59.070  
Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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 non-public offerings not exceeding \$500,000 including under SEC Rule 504 (OAR 441-065-0220).

(7) Registration for SCOR offerings not exceeding \$1,000,000 including under SEC Rule 504 (OAR 441-065-0225).

(8) Registration for non-public offerings not exceeding \$5,000,000 including under SEC Rule 505 (OAR 441-065-0230).

(9) Registration for generic real estate paper offerings (OAR 441-065-0260).

(10) Registration for certain compensatory benefit plans and contracts (OAR 441-065-0270).

Stat. Auth.: ORS 59.065 & ORS 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; FCS 7-2000, f. & cert. ef. 6-2-00

#### 441-065-0015

##### When Registration Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the registration of securities under ORS 59.065 and OAR 441, division 65.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that the fees are insufficient;

(b) Documents required by the rules in OAR 441, division 65 have not been submitted by the applicant;

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 65 has not been submitted to the Director by the applicant; or

(d) Changes to disclosure documents requested by the Director have not been submitted to the Director by the applicant.

(3) An application for registration of securities is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned registration shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.065  
Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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 as defined in OAR 441-011-0040;
  - (l) A **Form U-4** application and a filing fee as set in OAR 441-175-0002 for each salesperson if the offering will not be made through a licensed broker-dealer; and
  - (m) A registration fee as set in OAR 441-065-0001.
- (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.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 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; FCS 7-2000; f. & cert. ef. 6-2-

00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **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 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 as set in OAR 441-065-0001;

(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; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **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 an 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 59

Stats. Implemented: ORS 59.035(9) & ORS 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 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**

(1) The Director creates the following classifications of transactions in securities:

(a) An offering relying on "Regulation D" adopted by the Securities and Exchange Commission in 17 CFR Part 230, except 230.506; and Part 239;

(b) 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 441-065-0230 as a non-public or limited offering.

(2) Transactions in securities described in section (1) may be registered under the appropriate provisions of OAR 441-065-0060 through 441-065-0230.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & ORS 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; FCS 2-1998, f. & cert. ef. 4-30-98

**441-065-0070**



## Definitions

The following definitions are adopted for the purposes of OAR 441-065-0060 through 441-065-0230:

(1) "Accredited Investor" means a person as defined in OAR 441-035-0010.

(2) "Affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with, the person specified.

(3) "Aggregate Offering Price" means 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 offered for both cash and non-cash consideration, the aggregate offering price shall be 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 the value of the consideration 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" means any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 (17 CFR 230.145) or 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" means the process of determining the number of purchasers under OAR 441-065-0230(2)(b) by:

(a) Excluding the following purchasers:

(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 relatives of the purchaser 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) Counting as a single purchaser a corporation, partnership or other entity. 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, except to the extent provided in subsection (5)(a) of this rule;

(c) Counting as a single purchaser a non-contributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 where the trustee makes all investment decisions for the plan;

(d) Counting as a single purchaser each client of a federal or state investment adviser or customer of a broker-dealer regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "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" means 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 policy making functions for the issuer.

(8) "Issuer" shall have the meaning given it in ORS 59.015, except that in the case of a proceeding under the Federal Bankruptcy Code (11 USC 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) "Notice filing" or "notice filing rule" means a filing made under ORS 59.049, OAR 441 division 049 or under former OAR 441-065-0240.

(10)(a) "Permitted Oregon Purchaser" means any person who at the time of sale is or who the issuer reasonably believes is:

(A) A natural person who purchases the security for cash, marketable securities or both at least \$10,000 of the securities offered, provided the purchase does not exceed ten percent of the purchaser's net worth at the time of purchase;

(B) A natural person who purchases the securities for cash, marketable securities or both provided:

(i) The purchaser's personal income exceeded \$70,000 in each of the two most recent years;

(ii) The purchaser reasonably expects an income in excess of \$70,000 in the current year; and

(iii) The amount purchased does not exceed ten percent of the purchaser's personal income for the most recent year.

(C) A 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 paragraph (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.

(b) In subsection (a), the net worth and personal income of a spouse may be included in determining whether a purchaser is a "Permitted Oregon Purchaser."

(11) "Purchaser Representative" means any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) The person is not an affiliate, director, officer or other employee of the issuer, 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) The person has such knowledge and experience in financial and business matters that the person 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) The person is acknowledged by the purchaser in writing, during the course of the transaction, to be the purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) The person discloses to the purchaser in writing a reasonable time prior to the sale of the securities any material relationship between the purchaser representative or affiliates and the issuer or its affiliates as well as compensation involved that:

(A) Exists presently;

(B) Existed within two years; or

(C) Is planned.

(12) "Sophisticated Purchaser" means any person, acting alone or with a Purchaser Representative, that has, or that the issuer reasonably believes has, sufficient knowledge and experience in financial and business matters to evaluate the merits and risks of the proposed investment.



(13) "Suitable Purchaser" means any person who purchases the securities of the issuer through a licensed broker-dealer on a solicited basis.

(14) "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: Publications referenced are available from the agency.]

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; FCS 2-1998, f. & cert. ef. 4-30-98

#### 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 or 441-065-0230.

(2) Registration of offerings pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 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, or 441-065-0230. A "blank check company" is defined in OAR 441-045-0010.

(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 or 441-065-0230 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.

(5) All forms mentioned in OAR 441-065-0060 to 441-065-0230 are available from the Director.

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; FCS 2-1998, f. & cert. ef. 4-30-98

#### 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 or 441-065-0230; for which a notice filing is made pursuant to ORS 59.049(5) and OAR 441-049-1051 or registered for failure to comply with notice filing requirements of ORS 59.049(5) and OAR 441-049-1051 shall 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; notice filing pursuant to ORS 59.049(5) and OAR 441-049-1051; or registration for failure to comply with notice filing requirements of ORS 59.049(5) and OAR 441-049-1051, 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: Publications referenced are available from the agency.]

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; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98

**441-065-0100**

**Information Requirements**

(1) In general. The rules in OAR 441 division 065 rule shall not be construed as waiving or modifying the provisions of the Oregon Securities Law relating to disclosure of material information to investors.

(2) Except for offerings pursuant to section (4) of this rule, no specific disclosure or method of disclosing information is required for sales made exclusively to accredited investors.

(3) Registered offerings under OAR 441-065-0220. For an offering registered under OAR 441-065-0220, 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.

(4) Registered offerings under OAR 441-065-0225. For an offering 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. For an offering registered under OAR 441-065-0230, each prospective purchaser of the securities shall be given disclosures as provided in this rule.

(a) The disclosure materials shall either:

(A) Include at least the type of information and documentation as provided in Securities and Exchange Commission Rule 502(b)(2) (17 CFR 230.502(b)(2)), which rule is adopted by reference; or

(B) Be in writing, include all information material to an understanding of the issuer, its business and the securities being offered, be full, fair and complete, and be presented in a clear, concise and understandable manner.

(b) The issuer must give each prospective purchaser an opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information that 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; and

(c) Each prospective purchaser who is not an "accredited investor" shall be given upon written request, 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.

(6) Time for disclosures. All disclosures shall 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, (to 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 prominent and in print that is easy to read:

(a) "The securities offered are registered with the Director of the Department of Consumer and Business Services for the State of Oregon under provisions of OAR 441-065-0060 through 441-065-0230. The Director reviewed the registration statement only briefly and has not reviewed this document. In deciding whether or not to invest in these securities, you should rely on your own examination of the company issuing the securities and the terms of the offering including the merits and risks involved;"

(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;" or

(c) "In deciding whether or not to invest in the securities offered, you should rely on your own examination of the company issuing the securities and the terms of the offering, including the merits and risks involved. These securities have not been approved or disapproved by any federal or state securities commission or other regulatory authority. Also, no such agency has determined if this document is truthful or complete. Any representation to the contrary is a criminal offense.

You will not be able to transfer or resell these securities except pursuant to registration under the federal Securities Act of 1933 or an exemption from registration if available. Consequently, you may be required to bear the financial risks of this investment for an indefinite period of time."

[ED. NOTE: Forms referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & ORS 59.085

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 815-036-0020; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

**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 or 441-065-0230 may not be offered or sold using any form of public advertising or general solicitation without the prior authorization of the Director.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & ORS 59.085

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 815-036-0025; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

**441-065-0130**

**Disqualification**

(1) The Director may deny the use of the optional registration provisions in OAR 441-065-0220 through 441-065-0230 if:

(a) Federal Disqualification. Applicant is disqualified from using any provisions of SEC Regulations A or D; or

(b) Oregon Disqualification. 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) 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) Was convicted within five years of the application for registration of:

(i) 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

(ii) 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 state administrative order or judgment, including an injunction entered within five years prior to the filing of the application of registration in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found; or

(D) Is currently subject to any order, judgment or decree of any court of competent jurisdiction entered within five years of the application for registration, 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 the making of any false filing with a state.

(2) The disqualifications of section (1)(b) 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 disqualifying action was entered 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.

(3)(a) The Director reviews each application to register to determine whether registration should be granted or denied.

(b) Notwithstanding the requirements of subsection (1)(b), registration may be allowed if the Director finds adequate public safeguards are provided for the offerings and:

(A) The applicant for registration provides sufficient facts from which the Director finds it is in the public interest to allow the registration; or

(B) The state that caused the disqualification recommends registration of the offering.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.065 & ORS 59.285

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; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98

#### **441-065-0140**

##### **Limitation on Sales Expenses**

(1) All expenses of an offering registered pursuant to OAR 441-065-0220 or 441-065-0230, 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 441-085-0010(2) relating to selling expenses.

Stat. Auth.: ORS 59.085

Stats. Implemented: ORS 59.065, ORS 59.085 & ORS 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; FCS 2-1998, f. & cert. ef. 4-30-98

#### **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 can-

not 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 & ORS 59.285

Stats. Implemented: ORS 59.065 & 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 815-036-0045; 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 441-065-0230 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 make a 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 and offers or makes the rescission payment.

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

(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 & ORS 59.125

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 815-036-0050; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98

#### **441-065-0170**

##### **Registration Procedures for "Regulation D" and Similar Type Offerings**

(1) An application to register securities filed pursuant to OAR 441-065-0220 (small offerings not exceeding \$500,000 including under SEC Rule 504) shall include the following:

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

(b) A copy of the written disclosures required by OAR 441-065-0100(3);

(c) A registration fee as set in OAR 441-065-0001;

(d) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 and a per person license fee as set in OAR 441-175-0002; and

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

(2) An application to register securities filed pursuant to OAR 441-065-0225 (small corporate offerings not exceeding \$1,000,000 including under SEC Rule 504) shall include the following:



(a) A completed **Form U-7** (a uniform disclosure document for small corporate offerings) 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 as set in OAR 441-065-0001; and

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on **Form U-4** and a per person license fee as set in OAR 441-175-0002.

(3) Amendments to Small Corporate Registrations under section (2). If a material change occurs concerning the issuer or the offering while the offering is effective in this state:

(a) The **Form U-7** Disclosure Document shall be amended to make the disclosures accurate and complete;

(b) The amended **Form U-7** showing additions and deletions shall be filed with the Director for approval;

(c) The offering shall be suspended in this state until approval is received from the Director to proceed with the offering; and

(d) The registrant shall report the status of the offering in this state and file a plan for dealing with present purchasers in this state.

(4) An application to register securities filed pursuant to OAR 441-065-0230 (limited offering for offerings not exceeding \$5,000,000 including under SEC Rule 505) shall include the following:

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

(b) A registration fee in accordance with OAR 441-065-0001;

(c) Unless the offering is being sold through a licensed broker-dealer or by a person 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 per person license fee in accordance with OAR 441-175-0002; and

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

[ED. NOTE: Forms referenced are available from the agency.]

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; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-065-0180

##### Licensing of Salespersons

(1) General License Requirements. Offers and sales of offerings registered pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 may only be made by licensed broker-dealers, licensed salespersons or persons 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 shall not be simultaneously licensed to two or more employers; and

(e) The issuer and salespersons shall comply with OAR 441-175-0120.

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

(a) A completed Form U-4 (salesperson application); and

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

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; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-065-0190

##### Reports

(1) For offerings registered pursuant to OAR 441-065-0220 or 441-065-0230, the Director may, as a condition of registration, require the issuer to file one or more sales reports.

(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: Publications referenced are available from the agency.]

[ED. NOTE: Forms referenced are available from the agency.]

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; FCS 2-1998, f. & cert. ef. 4-30-98

#### 441-065-0200

##### Records

The issuer shall, for 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 441-065-0230.



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; FCS 2-1998, f. & cert. ef. 4-30-98

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

The Director may, by Order, modify or waive any requirement of OAR 441-065-0060 through 441-065-0230. 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; FCS 2-1998, f. & cert. ef. 4-30-98

**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 shall comply with all applicable provisions of OAR 441-065-0060 through 441-065-0210.

(2) Qualifications checklist:

(a) The issuer shall be a corporation or limited liability company organized under the laws of one of the states or possessions of the United States;

(b) The issuer shall not engage in a petroleum exploration or production, mining or other extractive industries business;

(c) The offering shall 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 shall include information demonstrating 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 shall be equal to or greater than \$1 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, shall not exceed \$1,000,000;

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

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

(3) Purchaser Qualifications. No limits are placed upon the number of persons who may purchase securities registered pursuant to this rule. Sales of securities registered pursuant to this rule shall only be made to purchasers who are:

- (a) Accredited investors;
- (b) Permitted Oregon purchasers;
- (c) Sophisticated purchasers;
- (d) Suitable purchasers; or
- (e) Direct purchasers from the issuer.

Stat. Auth.: ORS 59.065  
 Stats. Implemented: ORS 59.065  
 Hist.: FCS 4-1992, f. & cert. ef. 10-1-92; FCS 3-1998, f. & cert. ef. 7-2-98

**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

**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 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 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

##### Registration for Certain Compensatory Benefit Plans and Contracts

#### 441-065-0270

##### Compensatory Benefit Plans and Contracts

(1) Creation of Classification.

(a) The Director creates a classification of transaction in securities by an issuer designated as a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701).

(b) An issuer of a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701) may use this registration rule.

(2) Application to Register. The issuer shall submit:

(a) A completed Form U-1 (Application to Register Securities), except documents required under section 8 of Form U-1;

(b) A registration fee in accordance with OAR 441-065-0001;

(c) At least one completed Application to License a Salesperson on Form U-4 and license fee as set in OAR 441-175-0002. 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 following information:

(A) Type of business organization;

(B) Full title of plan or description of contracts;

(C) Type of plan;

(D) Affirmation that the offering is exempt from federal registration pursuant to SEC Rule 701; and

(E) 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 (5) of this rule; and

(f) Any supplementary materials requested by the Director.

(3) Discrete Offering. Subject to the inclusion of certain offers and sales of securities pursuant to OAR 441-065-0060 through 441-065-0230 or notice filing, 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 65 or otherwise exempt from the registration requirements of ORS 59.055.

(4) 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.

(5) 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.

(6) 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) This registration shall be effective only while the federal exemption under 17 CFR 230.701 is available to the issuer for this offering.

(7) 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 USC 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.

(8) Full Disclosure. This rule shall not be construed as waiving or modifying the provisions of the Oregon Securities Law relating to disclosure of material information to investors.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065 & 59.285

Hist.: FCS 3-1991, f. & cert. ef. 8-23-91; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## DIVISION 75

### RENEWAL OF SECURITIES REGISTRATIONS

#### 441-075-0010

##### General Renewal Procedure

(1) Except for orders issued pursuant to OAR 441-065-0270(5), 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 & ORS 59.285

Stats. Implemented: ORS 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000; f. & cert. ef. 6-2-00

#### 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 OAR 441-065-0001.

(6) Prospectus. An applicant for renewal of an offering, other than a compensatory benefit plan registered under OAR 441-065-0270, 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 or offering document, the applicant for renewal of an offering other than a compensatory benefit plan registered under OAR 441-065-0270 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 OAR 441-175-0002. The requirements for issuer salesperson licensing are set forth in OAR 441-175-0120(11).

(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; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## 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 & ORS 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 & ORS 59.285

Stats. Implemented: ORS 59.085

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

### **DIVISION 95**

#### **FAIRNESS HEARINGS**

##### **441-095-0030**

##### **Fairness Hearing Procedures**

(1) The Director may decline to accept the filing of a plan pursuant to ORS 59.095 if the proponent of the plan is unable to establish a nexus with Oregon. That nexus must be established by showing:

(a) That the proponent of the plan is an entity with headquarters in Oregon;

(b) That the entity to be acquired or merged has its headquarters in Oregon; or

(c) That a minimum of 50% of the securities, claims or property interests to be exchanged are owned by persons who reside in Oregon.

(2) The proponent of the plan shall file:

(a) A **Form U-1** registering all securities to be issued by the proponent;

(b) A copy of the merger agreement between the parties;

(c) A copy of the information statement to be submitted to the holders of the securities, claims or property interests to be exchanged;

(d) A copy of the Articles of Formation of the acquiring entity;

(e) A **Form U-4** for each agent of the issuer, or the name and Central Registration Depository number of the broker-dealer to execute the securities transactions; and

(f) A filing fee for the total offering amount calculated pursuant to OAR 441-065-0001 and a fee in the amount set in OAR 441-175-0002 for each **Form U-4** being filed.

(3) Following a preliminary review by the Director and resolution, if necessary, of any fairness or procedure issues raised by the Director, 30 days notice of the fairness hearing shall be given to all holders of the securities, claims or property interests to be exchanged. The proponent may request a shorter notice period of not less than 10 days, which request may not be unreasonably denied by the Director, provided the proponent demonstrates that all holders of the securities, claims or property interests to be exchanged:

(a) Are accredited investors as defined in OAR 441-035-0010; or

(b) Have been directly involved in the development of the plan, merger or acquisition negotiations.

(4)(a) The fairness hearing shall be conducted as an other than contested case pursuant to ORS Chapter 183 by a hearings officer designated by the Director at a location in Oregon designated by the hearings officer. With the consent of both parties to the merger or acquisition, the hearing may be conducted by telephone conference.

(b) The hearings officer may permit testimony of counsel, all interested parties to the exchange, and any holder of securities, claims or property interests to be exchanged who wishes to make a statement or raise questions. Any interested party who is unable to attend the hearing shall be permitted to participate by telephone or in writing.

(5) Any order issued concerning the plan of the proponent shall be dated effective as of the date of the hearing, unless issues were raised at the hearing which must be resolved, in which event the order shall be dated on the date when all such issues are satisfactorily resolved.

(6) The order issued shall make specific findings as to whether the plan is fair, just and equitable and free from fraud; and

(a) Approve the request as proposed by the proponent;

(b) Approve the request with conditions, limitation, or restrictions imposed by the Director; or

(c) Deny the request, provided the Director made findings that the plan is unfair, unjust or inequitable or not free from fraud. Notice of any denial issued under this subsection shall be provided by the Director, at the expense of the proponent, to all persons who were entitled to receive or who did receive notice of the hearing.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.095

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

## DIVISION 175

### LICENSING OF BROKER-DEALERS, INVESTMENT ADVISERS, AND SALESPERSONS

#### General Provisions

#### 441-175-0002

##### Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the Director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$200;

(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$50 and a renewal license fee of \$50;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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 "IARD" means the Investment Adviser Registration Depository maintained by the National Association of Securities Dealers Regulation, Inc. to register investment advisers and investment adviser representatives.

(7) 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.

(8) 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.

(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; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

#### **441-175-0015**

##### **When Licensing Application Deemed Abandoned**

(1) For purposes of this rule, the term “application” includes all documents, information and fees prescribed for the licensing of broker-dealers, state investment advisers, salespersons, or investment adviser representatives under ORS 59.175 and OAR 441, division 175.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that fees are insufficient;

(b) Documents required by the rules in OAR 441, division 175 have not been submitted by the applicant; or

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 175 has not been submitted to the Director by the applicant.

(3) An application for licensing is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director’s written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned licensing application shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **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 “state investment adviser” is granted pursuant to subsection (20)(b)(K) of ORS 59.015 to the following persons, provided the person is not otherwise licensed as a broker-dealer, state investment adviser, mortgage broker, salesperson, or investment adviser representative:

(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 in OAR 441-035-0010.

(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 441-065-0230 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 ORS 59.840 to 59.965 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; FCS 7-2000; f. & cert. ef. 6-2-00

#### 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 59.015(20)(b) 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

#### 441-175-0041

##### Exclusion from Definition of "Investment Adviser Representative"

An exclusion from the definition of "investment adviser representative" is granted pursuant to subsection (8)(b) of ORS 59.015 to the following persons, provided that the person is not otherwise licensed as a broker-dealer, federal covered investment adviser, state investment adviser, salesperson or investment adviser representative:

(1) Any person, not otherwise excluded as a "state investment adviser" pursuant to subsection (20)(b) except (20)(b)(I) of ORS 59.015 or OAR 441-175-0030, who represents such an excluded person.

(2) Any person who is compensated by a licensed broker-dealer, federal covered investment adviser or state 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, federal covered investment adviser or state investment adviser.

(3) The Director may, by order, as to any person or type of activity, 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 59.015(8), ORS 59.285

Stats. Implemented: ORS 59.015(8)

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02

#### 441-175-0046

##### Federal Covered Investment Advisor Representative

For purposes of ORS 59.015(8)(a)(B), the term "Investment Advisor Representative" who is employed by or associated with a federal covered investment advisor only includes an individual who has a "place of business," as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission, in Oregon, and who either:

(1) Is an Investment Advisor Representative" as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisors Act of 1940 by the U.S. Securities and Exchange Commission; or

(2)(a) Is not a "supervised person" as that term is defined in rules or regulations promulgated under the Investment Advisor Act of 1940 by the U.S. Securities and Exchange Commission; and

(b) Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment advisor.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7), 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99

#### 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 & ORS 59.285

Stats. Implemented: ORS 59.15(1), ORS 59.15(6), ORS 59.15(10), ORS 59.135 & ORS 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 ORS 59.840 to 59.980 and relying upon exclusion from the definition of "broker-dealer" pursuant to ORS 59.015(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 as issuer salespersons 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 in OAR chapter 441, division 865.

(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; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04

#### 441-175-0060

##### Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Markets Improvement Act of 1996

(1) Broker Dealers subject to section 15 of the Securities Exchange Act of 1934. A licensed broker-dealer that is subject to section 15 of the Securities Exchange Act of 1934, as amended, referred to as a "NASD broker dealer," is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0080(1) Licensing of Broker-Dealers and 441-175-0110 Surety Bond; Letter of Credit.

(2) Investment Advisers:

(a) Federal Covered Investment Adviser. A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 Applications for Licensing of Investment Advisers and 441-175-0110 Surety Bond; Letter of Credit.

(b) Out-of-State State Investment Adviser. A state investment adviser who has a principal place of business in a state other than this state and complies with that state's bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter or credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.

(c) An out-of-state state investment adviser that is not exempt under the "de minimis" exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.

(3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.

(4) Notice filing by Federal Covered Investment Adviser.

(a) Notice filing by a federal covered investment adviser will be accepted by the Director through IARD using form ADV (Uniform Application for Investment Adviser Registration adopted by the SEC (17 C.F.R. 279.1 (1996) as modified in 2000) and shall include the fee required by OAR 441-175-0002.

(b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the Director through IARD and shall include the fee required under OAR 441-175-0002.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.165 & 59.285

Stats. Implemented: ORS 59.165

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; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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, which may be conditioned or restricted pursuant to OAR 441-225-0030, 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) Licensees conducting business under any name other than the name in which their license is issued by the Director shall comply with OAR 441-175-0171.

(4) Licenses of non-NASD broker-dealers or state investment advisers expire one year after the date of initial licensing, except licenses of state investment advisers which license through IARD will expire on December 31 of each year. 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 or investment adviser representatives shall remain effective as the license of the successors 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 or investment adviser representatives 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 salespersons' or investment adviser representatives' 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 state 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 salespersons' or investment adviser representatives' licenses from the predecessor to the successor.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), ORS 59.205(2) & ORS 59.285

Stats. Implemented: ORS 59.165, ORS 59.175(1), ORS 59.205(2) & ORS 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; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01

#### 441-175-0080

##### Applications for Licensing of Broker-Dealers

(1) An applicant for licensing as a NASD broker-dealer must submit to the NASD/CRD:

(a) A completed **Form BD** (broker-dealer application available from the Securities Section);

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (salesperson 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 for each salesperson as set in OAR 441-175-0002.

(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 as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (salesperson 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 for each salesperson as set in OAR 441-175-0002; and

(e) 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.

[ED. NOTE: Forms referenced are available from the agency.]

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; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-175-0085

##### Limited Licensing of Canadian Broker-Dealers and Salespersons

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by,

(a) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(b) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) A salesperson who will be representing a Canadian broker-dealer licensed under this rule may, provided the agent is licensed in accordance with this rule, effect transactions in securities in this state as permitted for the broker-dealer in section (1) of this rule.

(3) A Canadian broker-dealer may license under this rule provided that it:

(a) Files an application in the form required by the jurisdiction in which it has its head office;

(b) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions in this state and files evidence thereof; and

(c) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) A salesperson who will be representing a Canadian broker-dealer licensed under this rule in effecting transactions in securities in this state may license under this rule provided that he or she:

(a) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office; and



(b) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under ORS 59.205, licensing becomes effective on the 30th day after an application is filed, unless earlier made effective, and expires on December 31 of every year.

(6) A Canadian broker-dealer licensed under this rule shall:

(a) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(b) Provide the Director upon request with its books and records relating to its business in this state as a broker-dealer;

(c) Inform the Director forthwith of any criminal action taken against it or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and disclose to its clients in the state that the broker-dealer and its salespersons are not subject to the full regulatory provisions in the Oregon Securities Law.

(7) A salesperson of a Canadian broker-dealer licensed under this rule shall:

(a) Maintain his or her provincial or territorial registration in good standing;

(b) Inform the Director forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the salesperson as a result of any self-regulatory or regulatory action involving fraud, theft, misrepresentation or similar conduct.

(8)(a) Renewal applications for Canadian broker-dealers and salespersons under this rule must be filed by January 1 of each calendar year following the date of original licensing.

(b) Renewal applications may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (3)(a) or (4)(a) of this rule, as the case may be.

(9) Every applicant for licensing or renewal licensing under this rule shall pay the applicable non-refundable fee for broker-dealers and agents as set in OAR 441-175-0002.

(10) A Canadian broker-dealer or salesperson licensed under this rule may only effect transactions in this state as permitted in sections (1) or (2) of this rule with or through:

(a) The issuers of the securities involved in the transactions;

(b) Other broker-dealers;

(c) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(d) As otherwise permitted pursuant to the Oregon Securities Law.

(11) A Canadian broker-dealer or agent licensed under this rule and acting in accordance with the limitations set out in section (10) is exempt from all of the requirements of the Oregon Securities Law, except the anti-fraud provisions and the requirements set out in this rule. Such Canadian broker-dealer or salesperson may only have its notice filing under this rule denied, suspended or revoked for a breach of the anti-fraud provisions in ORS 59.135 or the requirements in this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 5-2001, f. & cert. ef. 6-7-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-175-0100

##### Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser may apply through IARD or with the Director.

(2) An applicant applying through IARD must submit:

(a) To the IARD:

(A) A completed **Form ADV**, including Parts 1 and 2 of Form ADV;

(B) An investment adviser licensing fee as set in OAR 441-175-0002;

(C) At least one completed **Form U-4** (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section). All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(D) A licensing fee for each investment adviser representative as set in OAR 441-175-0002.

(b) To the Director:

(A) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(B) 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 Director within 30 days following the change;

(C) Financial statements if the person is an Oregon based state investment adviser applicant. 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 financial statements described in paragraphs (3)(h)(A)-(D) of this rule;

(D) For Oregon based state investment advisers, a copy of any proposed client contracts; and

(E) Fees and any form or portion of any form which cannot be submitted through IARD.

(3) An applicant applying with the Director must submit:

(a) A completed **Form ADV**, including Parts 1 and 2 of Form ADV;

(b) A state investment adviser licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section) pursuant to OAR 441-175-0120. All licensed state investment advisers must have at least one investment adviser representative licensed continuously throughout the licensing period of the investment adviser;

(d) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(e) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(f) For Oregon based state investment advisers, a copy of any proposed client contracts;

(g) 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 Director within 30 days following the change; and

(h) Financial statements if the person is an Oregon based state investment adviser applicant. 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 such 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 such 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.

(4) All applicants must comply with the provisions of OAR 441-175-0070.

[ED. NOTE: Forms referenced are available from the agency.]

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; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **441-175-0105**

##### **Material Changes, Amendments and Notice of Civil and Criminal Actions**

(1) A broker-dealer or state investment adviser applicant or licensee must file an amendment to its application and a broker-dealer, state or federal covered investment adviser, must file an amendment to the application of their respective salespersons or investment adviser representatives 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) Disciplinary disclosure answers on the application;
- (d) Change in or additional affiliated business entity name;
- (e) Change in ownership other than as provided in OAR 441-175-0070(7);
- (f) Change in form of organization;
- (g) Change of address; or
- (h) 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 state investment advisers; and
- (c) **Form U-4** for salespersons or investment adviser representatives.

(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 Director;

(b) The IARD for any investment advisers or investment adviser representatives who have previously filed applications through IARD; or

(c) The Director for all other persons.

(5) Filing amendments to a salesperson or investment adviser representative application shall be the responsibility of both the salesperson or investment adviser representative and the employing broker-dealer, or state or federal covered investment adviser.

(6) There is no fee required in connection with an amendment filed pursuant to this rule.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175, ORS 59.185 & ORS 59.285

Stats. Implemented: ORS 59.175 & ORS 59.185

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01

#### **441-175-0110**

##### **Surety Bond; Letter of Credit**

(1) Every applicant for a license as an Oregon based state 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 an Oregon based state 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 an Oregon based state investment adviser.

(3) In no less than six years after a person ceases to be required to maintain a surety bond or a letter of credit, the person may apply to 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) & ORS 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; FCS 7-2000, f. & cert. ef. 6-2-00

#### **441-175-0120**

##### **Licensing of Salespersons or Representatives to Non-NASD Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities**

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a NASD broker-dealer, must be licensed as provided in this rule.

(2) A non-NASD broker-dealer, an issuer, or an owner of securities must submit to the Director a complete application to license a salesperson including:

(a) A completed **Form U-4** (available from the Securities Section);

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations pursuant to section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking, on **Form 440-2131**, as provided in section (10) of this rule.

(3) A state or federal covered investment adviser must submit to the IARD, if the adviser files with the IARD and the IARD is capable of accepting the application, and otherwise to the Director:

(a) A completed **Form U-4** (available on IARD or from the Securities Section);

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score on the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking, on **Form 440-2131**, as provided in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives 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 an issuer or owner of securities where the securities have been registered pursuant to ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(5) A salesperson to a non-NASD broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements pursuant to section (4) 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, 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.

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements pursuant to section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the S-7 (Uniform Securities Agent State Law Examination), then either the S-65 (Uniform Investment Adviser Law Examination) if taken prior to January 1, 2000 or S-66 (Uniform Combined State Law Examination) if taken after January 1, 2000; or

(B) The S-65 (Uniform Investment Adviser Law Examination) if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

(F) Such other professional designation as the Director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) 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.

(9) 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.

(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered 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 salespersons or investment adviser representatives employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative 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 person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the Director 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 or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(C) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Director.

(11) 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) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed pursuant to ORS 59.049(1) or 59.049(2), do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the Director shall issue a license, which may be conditioned or restricted pursuant to OAR 441-225-0030, for the salesperson or investment adviser representative unless the Director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(13) If the application, the undertaking, any supporting material or any representations made to the Director are inaccurate or incomplete in any material respect, the license shall be void.

(14) License Expiration. A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the Director as follows:

(a) The license of an issuers or owners salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

[ED. NOTE: Forms referenced are available from the agency.]

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; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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 Director 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 CRD including:

(a) A completed Form U-4;

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002; 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 Director 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 Director.

(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, condition or restrict the license pursuant to OAR 441-225-

0030, 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 Director 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; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 9-2003, f. 12-30-03, cert. ef. 1-1-04; FCS 1-2004, f. & cert. ef. 5-19-04

#### **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 or of a control person 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 state or federal covered investment adviser which has had its license or notice denied, suspended or revoked by the Director;

(b) Has had a license or notice 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, license or notice 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 sales practices violations which is still pending, resulted in an arbitration award or civil judgment against the applicant, regardless of amount, or was settled for an amount of \$10,000 or more; or

(B) Was settled or decided against the person individually or as part of a group for \$10,000 or more; or

(C) Within the past 24 months, alleged sales practices violations and compensatory damages of \$5,000 or more, or alleged forgery, theft, misappropriation or conversion of funds or securities.

(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 & ORS 59.285

Stats. Implemented: ORS 59.175 & ORS 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; FCS 7-2000; f. & cert. ef. 6-2-00

#### 441-175-0150

##### Termination or Cancellation of Salesperson or Investment Adviser Representative License

(1) A salesperson's or investment adviser representative's license with a broker-dealer, state or federal covered investment adviser, issuer or owner, ("employer"), may be terminated at any time by either the salesperson or investment adviser representative, or the employer.

(2) The employer shall provide the Director and the terminated person with written notice of the termination (Form U-5) within 30 days of the termination, accurately describing the reason for the termination pursuant to ORS 59.370(2), 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) If the employer is a state or federal covered investment adviser and the investment adviser representative's application was filed through IARD, the notice shall be filed with IARD;

(c) All other employers shall file the notice with the Director.

(3) The salesperson or investment adviser representative 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 or investment adviser representative 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 or notice of the employer suspends the license of the salesperson or investment adviser representative, however, the end of suspension of the license or notice of the employer automatically reinstates the license of the salesperson or investment adviser representative;

(b) The revocation, cancellation, withdrawal or expiration of the license or notice of the employer cancels the license of the salesperson or investment adviser representative;

(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 or investment adviser representative license, without prior opportunity for a hearing, upon a showing of a danger to the public health or safety; however, the affected party shall be entitled to a post-action hearing.

Stat. Auth.: ORS 59.175, ORS 59.185, ORS 59.2855 & 59.370

Stats. Implemented: ORS 59.175, ORS 59.185 & ORS 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; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02

#### 441-175-0160

##### Renewal of NASD Broker-Dealer and Salesperson 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 to the NASD/CRD:

(a) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(b) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(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; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-175-0165**

**Renewal of the Licenses of Non-NASD Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives**

(1) The license of a non-NASD broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, 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. Provided, however, that any license of a state investment adviser or investment adviser representative who has filed an application through IARD will expire on December 31 of each year unless renewed through IARD.

(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 state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the Director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, pursuant to OAR 441-175-0105, which have not previously been submitted.

(5) To renew a license, a non-NASD broker-dealer or state investment adviser which has not previously licensed through IARD must submit the following items to the Director:

(a) A non-NASD broker-dealer or state 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 Director;

(d) A salesperson or investment adviser representative renewal form for each salesperson or investment adviser representative to be renewed, signed by both the salesperson or investment adviser representative and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (7) of this rule;

(f) A salesperson or investment adviser representative renewal fee as set in OAR 441-175-0002 for each salesperson or investment adviser representative to be renewed, except as provided in section (7) of this rule; and

(g) For an Oregon based state investment adviser, financial information as set forth in section (6) of this rule.

(6) An applicant for renewal as an Oregon based state 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) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or

license expires, as shown in the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]

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; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-175-0171**

**Use of Trade Name or Assumed Business Name**

(1) Each person holding a license or applying for a license issued under ORS 59.005 to 59.370, who desires to operate under a trade name or an assumed business name must submit the following to the Director for each name to be used:

(a) A completed application, with an original signature, on a form approved by the Director; and

(b) A non-refundable filing fee as set in OAR 441-175-0002.

(2) An order issued by the Director authorizing the licensee to operate under the trade name or assumed business name shall remain in effect until the order is:

(a) Suspended or revoked pursuant to ORS 59.205; or

(b) Cancelled pursuant to ORS 59.225.

(3)(a) Any person using a trade name or assumed business name pursuant to an order issued by the Director must, within 30 days after any change of information, notify the Director in writing of any change in address, contact name, phone number or fax number.

(b) Any person making a change in the trade name or assumed business name must submit a new notice and filing fee as provided in Section (1) of this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7) & 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04

**441-175-0175**

**Internet Communications**

(1) Scope of rule. This rule applies to dissemination by firms or individuals of information about securities-related services or products on the Internet, except for any firms or individuals located in Oregon. As used in this section, the term "Internet" is to be construed liberally to include all proprietary or common carrier electronic systems or similar media.

(2) Solely disseminating information on the Internet concerning securities-related services or products offered by a firm or individual shall not be deemed to be "transacting business" in this state for purposes of ORS 59.165(1), provided the Internet communication:

(a) Is limited to general information on products or services;

(b) Prominently and conspicuously states that the firm or individual may only transact business in this state if first licensed or excluded from licensing requirements;

(c) Clearly states that follow-up, individualized responses to persons in this state using any contact method by such firm or individual, that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with Oregon licensing requirements or a valid exclusion from licensing; and

(d) Contains mechanisms, including and without limitation, technical firewalls or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said firm or individual has completed any applicable licensing or notice filing process in this state, or qualifies for an exclusion from such requirement.

(3) In the case of an individual who is a broker-dealer salesperson or an investment adviser representative, the Internet communication must further:

(a) Be authorized by the firm with which the individual is affiliated;

(b) Clearly disclose the affiliation with the broker-dealer or investment adviser firm;



(c) Be within the scope of authority granted to the individual by his or her firm; and

(d) Be reviewed and approved for content by a principal of the broker-dealer or investment adviser firm.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.165

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

## 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 account with a natural person as a customer or owner, which record shall state the customer's or account owner's name, address, tax identification or social security number, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a broker-dealer), annual income, net worth (excluding value of primary residence), the account's investment objectives, and whether the account includes the signatures of the associated person regularly handling the account and a supervisor designated pursuant to OAR 441-205-0210(2). In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. For accounts in existence on the effective date of this amended rule, this information must be obtained no later than May 2, 2006.

(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, neglects, or is unable to furnish or update such item of information and a statement to that effect is placed in such record.

(3) Every broker-dealer shall make and keep current a record indicating that:

(a) No later than May 2, 2006 for customers existing as of May 2, 2003, and no later than 30 days of the opening of an account for new customers since May 2, 2003, and thereafter at intervals no greater than 36 months, each customer or account owner was furnished with a copy of the account record or an alternate document with all information required by section (1) of this rule. This document may be mailed with the account statement, and may exclude any tax identification number and date of birth. The broker-dealer shall include an explanation of any terms regarding investment objectives, and shall include or accompany the document with prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the broker-dealer, and that the customer or owner should notify the broker-dealer of any future changes to information contained in the account record;

(b) For each account record updated to reflect a customer or account owner change of name or address, the broker-dealer sent a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, no later than 30 days after the broker-dealer received notice of the change;

(c) For each change in the account's investment objectives the broker-dealer has furnished to each customer or owner and the associated person, if any, responsible for that account a copy of the updated customer account record or alternate document with all information required to be furnished in subsection (a) of this section no later than 30 days after the broker-dealer received notice of the change or after the account was updated for any reason other than the broker-dealer receiving notice of the change. The broker-dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner;

(d) Each customer or account owner was furnished with a copy of each written agreement entered into on or after May 2, 2003 pertaining to that account and that, if requested by the customer or account owner, the customer or account owner was furnished with a fully executed copy of each agreement;

(e) Each customer of the broker-dealer has been provided with a notice containing the address and telephone number of the broker-dealer's department to which any account-related complaints may be directed.

(4) Every broker-dealer shall make and keep current a record with respect to each discretionary account which shall include the dated signature of each customer or account owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(5) The account record requirements in section (1) of this rule and the furnishing requirement in subsection (3)(a) of this rule apply only to accounts for which the broker-dealer is, or within the preceding 36 months has been, required to make a suitability determination under federal securities laws or the requirements of a self-regulatory organization of which it is a member.

(6) Every broker-dealer shall make and keep current, as to each office, the books and records described in this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 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; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-195-0020

##### Business Records by Broker-Dealers

(1) Every broker-dealer shall make and keep current the following books and records relating to its 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 each 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 its account or for the account of its customers or partners and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered 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 the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the

order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. 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 include instructions between partners and employees of a broker-dealer. The term "Time of Entry" shall mean the time when such broker-dealer transmits the order or instruction for execution;

(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 of any modification thereof, the account in which it was entered, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker-dealer shall produce upon request by the director a separate record which identifies each other person. An order with a customer other than a broker-dealer entered pursuant to the exercise of discretionary authority by the broker-dealer, or associated person thereof, shall be so designated;

(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 all 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, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date;

(l) A questionnaire or application for employment executed by each partner, officer, director, branch manager, or any employee, except any person associated with a broker-dealer whose functions are solely clerical or ministerial, 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) The associated person's name, address, social security number, date of birth and the starting date of the associated person's employment or other association with the broker-dealer;

(B) A complete consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(C) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed upon the asso-

ciated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(D) A record of any denial, suspension, expulsion or revocation of membership, or registration of any broker-dealer with which the associated person was associated in any capacity when such action was taken;

(E) A record of any permanent or temporary injunction entered against the associated person or any broker-dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(F) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing;

(G) A record of any other name or names by which the associated person has been known or which the associated person has used; provided, however, that if such associated person has been registered as a registered representative of such broker-dealer, or the associated person's employment has been approved by, the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc. or the International Securities 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;

(m) Fingerprint records together with any information received from the United States Attorney General or its designee for every person required to be fingerprinted under the Securities Exchange Act of 1934;

(n) A record as to each associated person of each written customer complaint received by the broker-dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a broker-dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint;

(o) A record listing every associated person of the broker-dealer which shows, for each associated person, every office of the broker-dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the broker-dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the broker-dealer;

(p) A record as to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a broker-dealer may elect to produce the required information promptly upon request of the director;

(q) A record of all agreements pertaining to the relationship between each associated person and the broker-dealer including a summary of each associated person's compensation arrangement or plan with the broker-dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined;

(r) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the broker-dealer has complied with, or adopted policies and procedures rea-

sonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the broker-dealer is a member that require advertisements, sales literature, or any other communications with the public by a broker-dealer or its associated persons be approved by a principal;

(s) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records;

(t) A record listing each principal of the broker-dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the broker-dealer is a member that require acceptance or approval of a record by a principal.

(u) The following record regarding any internal broker-dealer system of which such broker-dealer is the sponsor:

(A) A record of the broker-dealer's customers that have access to the system (identifying any affiliations between such customers and the broker-dealer);

(B) Daily summaries of trading in the system, including securities for which transactions have been executed through use of such system and transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation); and

(C) Time-sequenced records of each transaction effected through the system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if the system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker-dealer sponsoring the system).

(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.

(5) Every broker-dealer shall make and keep current, as to each office, the books and records described in subsections (1)(a), (1)(f), (1)(g), and (1)(l) through (1)(s) of this rule. For purposes of this rule, "office" means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

Stat. Auth.: ORS 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; FCS 1-2004, f. & cert. ef. 5-19-04

#### 441-195-0030

##### Records to be Preserved by Certain Broker-Dealers

(1) Every broker-dealer subject to OAR 441-195-0020 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), (e), (r) (s), (t), and analogous records created pursuant to OAR 441-195-0020(5). 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 OAR 441-195-0020(1)(d), (f), (g), (h), (i), (j), (n), (p), (r), (u), and analogous records made pursuant to OAR 441-195-0020(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 such broker-dealer, as such;

(d) Originals of all communications received and copies of all communications sent (and any approvals thereof) by such broker-dealer (including interoffice memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the broker-dealer is a member regarding communications with the public. As used in this subsection, the term communications includes sales scripts;

(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 its business as such, including agreements with respect to any account;

(h) All notices relating to an internal broker-dealer system provided to the customers of the broker-dealer that sponsors such internal broker-dealer system. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under this subsection if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this subsection include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

(3) Every 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.

(4) Every 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 (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD, all Forms BDW, all amendments to these forms, and all licenses or other documentation showing the registration of the broker-dealer with any securities regulatory authority.

(5) Every broker-dealer shall maintain and preserve in an easily accessible place:

(a) All records required under OAR 441-195-0020(1)(l) and (1)(o) until at least three years after the associated person has terminated the associated person's employment and any other connection with the broker-dealer;

(b) All records required under OAR 441-195-0020(1)(m) until at least three years after the termination of employment or association of those persons required to be fingerprinted under the Securities Exchange Act of 1934;

(c) All account record information required pursuant to OAR 441-195-0010(1), (3) and (4) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated;

(d) Each report which a securities regulatory authority has requested or required the broker-dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report;

(e) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker-dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker-dealer until three years after the termination of the use of the manual;



(f) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a broker-dealer may produce promptly the reports upon request by the director. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports.

(6) The records required to be maintained and preserved pursuant to OAR 441-195-0010, 441-195-0020 and this rule may be immediately produced or reproduced on microfilm, microfiche, or any similar medium, or on any digital storage medium or system, and may be maintained and preserved for the required time in that form. If such substitution for hard copy is made by a broker-dealer, it shall:

(a) At all times have available for examination of its records facilities for immediate, easily readable projection or production of the media or images and for producing easily readable images;

(b) Arrange the records and index 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 substitute storage media for the time required.

(7) If a person who has been subject to OAR 441-195-0020 ceases to be licensed pursuant to ORS 59.165 or such other statute dealing with licensing, such person shall, for the remainder of the periods of time specified in this rule, continue to preserve the records which it theretofore preserved pursuant to this rule.

(8) Every broker-dealer shall furnish promptly to the director legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under this rule, or any other records of the broker-dealer that are requested by the director.

(9) Records for the most recent two year period required to be made pursuant to OAR 441-195-0010(6) and subsections (2)(d) and (5)(d) of this rule which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the broker-dealer handled there, the broker-dealer need not maintain records at that office, but the records must be maintained at another location within the same state as the broker-dealer may select. Rather than maintain the records at each office, the broker-dealer may choose to produce the records promptly at the request of the director at the office to which they relate or at another location agreed to by the director.

Stat. Auth.: ORS 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; FCS 1-2004, f. & cert. ef. 5-19-04

#### 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 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 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 59

Stats. Implemented: ORS 59.195, ORS 59.205 & ORS 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 59

Stats. Implemented: ORS 59.135 & ORS 59.205

Hist.: CC 12, f. 7-12-73, ef. 9-1-73; Renumbered from 815-030-0200 and 815-030-0110

**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 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 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 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 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 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 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 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 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 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 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 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 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 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 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



**441-205-0145**

**Unethical Business Practices of State Investment Advisers and Their Investment Adviser Representatives**

(1) A person who is a State Investment Adviser or an Investment Adviser Representative for a State Investment Adviser is a fiduciary and has a duty to act primarily for the benefit of the Adviser's clients. The provisions of this rule apply to state investment advisers and their investment adviser representatives. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, a state investment adviser or its investment adviser representatives shall not engage in unethical business practices, including the following:

(a) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(b) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority from the client unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if that adviser in such situations can directly benefit from the number of securities transactions effected in a client's account.

(d) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(g) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(h) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(i) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(j) Charging a client an unreasonable advisory fee.

(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(l) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(m) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(n) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance,

the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, and whether the contract grants discretionary power to the adviser.

(o) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this rule or the Oregon Securities Law.

(p) Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Oregon Securities Law, this rule, or the Investment Advisers Act of 1940.

(2) The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall be deemed a dishonest, fraudulent or unethical business practice.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.205

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

**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), ORS 59.205(2) & ORS 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 permitted in section (3) of this rule;

(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.

(3) An investment adviser may enter into, perform, renew or extend an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation, of the funds, or any portion of the funds, if the contract does not contain a management fee

exceeding 1% of the total funds to be managed pursuant to the contract and the contract is with a person who is:

(a) A natural person who or a company that immediately after entering into the contract has at least \$750,000 under the management of the investment adviser;

(b) A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in case of a natural person, with assets held jointly with a spouse) of more than \$1,500,000; or

(B) Is a qualified purchaser as defined in Section (4) of this rule; or

(c) A natural person who immediately prior to entering into the contract is:

(A) The president, any vice president in charge of a principal business unit, division, or function, any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the investment adviser, any director, trustee, general partner or person serving in a similar capacity of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, providing that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(4) A qualified purchaser is:

(a) Any natural person who owns not less than \$5,000,000 in investments;

(b) Any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments;

(c) Any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouse), or direct lineal descendants by birth or adoption, spouses of such person, the estates of such person or foundations, charitable organizations, or trusts established by or for the benefit of such person; and

(d) Any trust that is not covered by (4)(c), was not formed for the specific purpose of acquiring the securities offered and for which the trustee or other person authorized to make decisions with respect to the trust and each person who has contributed assets to the trust is a person described in (a), (b), or (c).

Stat. Auth.: ORS 59.285

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; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02

#### 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 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 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 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 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

## 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 59

Stats. Implemented: ORS 59.175(4) & ORS 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

#### 441-225-0020

##### Termination of Order Authorizing Use of Assumed Business Name or Trade Name

The status of an order authorizing use of an assumed business name or a trade name pursuant to OAR 441-175-0171 is dependent upon the license status of the licensee. Therefore, without further action by the Director:

(1) The suspension of the license suspends the order to use the assumed business name or trade name; however, the end of suspension of the license automatically reinstates the order authorizing use of the assumed business name or trade name; and

(2) The revocation, cancellation, withdrawal or expiration of the license cancels the order authorizing use of the assumed business name or trade name.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.165

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00

#### 441-225-0030

##### License Conditions or Restrictions

(1) If the Director makes a finding as specified in ORS 59.205 or 59.215 and determines, in the public interest, that the license of an applicant should be conditioned or restricted, the Director may issue the license:

(a) Under the condition that the licensee be subject to heightened supervision by the employing firm for a specified period of time;

(b) Under the condition that the licensee retake and pass a specified competency examination within a specified period of time;



(c) Limiting the licensee to conducting business in a specified area of the industry;

(d) Restricting the licensee from conducting business in a specified area of the industry; or

(e) Restricting the licensee from acting as a supervisor for salespersons or investment adviser representatives conducting business in Oregon.

(2) If the Director makes a finding as specified in ORS 59.205 or 59.215 and determines, in the public interest, that the license of a licensee should be conditioned or restricted, the Director may issue an order modifying the license:

(a) To impose a condition that the licensee is subject to heightened supervision by the employing firm for a specified period of time;

(b) To impose a condition that the licensee retake and pass a specified competency examination within a specified period of time;

(c) To limit the licensee to conducting business in a specified area of the industry;

(d) To restrict the licensee from conducting business in a specified area of the industry; or

(e) To restrict the licensee from acting as a supervisor for salespersons or investment adviser representatives conducting business in Oregon.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175, ORS 59.215, ORS 59.215

Hist.: FCS 9-2001, f. & cert. ef. 9-28-01

## 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) Palladium — .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) Palladium — .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

## 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 650

Stats. Implemented: ORS 650.005 & ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.020(1) & ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 650.050

Stats. Implemented: ORS 650.005(8), ORS 650.020(1) & ORS 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 650

Stats. Implemented: ORS 650.005(8), ORS 650.020(1) & ORS 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 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

## 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- 500-0020

##### Fees for Banks, Trust Companies, Savings Banks, Extranational Institutions, Savings Associations and Call for Reports

(1) Definitions.

(a) As used in this rule, "Oregon assets" means;

(A) The average assets of an Oregon based insured institution that has no interstate branches.

(B) The result of the following computations for an insured institution that has interstate branches, excluding an extranational institution or an out-of-state bank:

(i) Divide the average total deposits at Oregon branches, by the insured institution's average total deposits at all branches for the same period; and

(ii) Multiply the result in subparagraph (i) by its average total assets.

(C) The average Oregon assets of an extranational institution.

(b) For the purposes of determining averages in subsections (1)(a):

(A) Average assets in subsections (1)(a)(A) and (B)(ii), shall be determined from the quarterly Call Reports of Condition and Income filed with the applicable federal supervisory agency for the calendar year immediately preceding the due date of the fee assessment;

(B) Average Oregon assets in (1)(a)(C), shall be determined from the quarterly reports of Oregon Assets filed with the Director for the calendar year immediately preceding the due date of the assessment; and

(C) Average total deposits at all branches and average total deposits at Oregon branches in (1)(B)(i), shall be determined from the Summary of Deposits at all branches and Summary of Deposits at Oregon branches filed with the applicable federal supervisory agency and additional Report of Deposits filed with Director for the calendar year immediately preceding the due date of the fee assessment.

(2) Call for Reports. To the extent any report used to determine the fee assessment is not required to be filed or made available to the Director under other Banking Rules, the specific reports shall be provided by the insured institution or extranational institution upon the call of the Director to allow the fee assessments to be determined.

(3) Subject to section (10) of this rule, the annual fee assessment under ORS 706.530 for an insured institution subject to the jurisdiction of the Director, including a savings association but excluding an out-of-state bank, is: If Oregon assets are:

(a) Less than \$10 million, \$800 plus .000300 of all assets;

(b) \$10 million or more but less than \$25 million, \$1,620 plus .000218 of all assets;

(c) \$25 million or more but less than \$100 million, \$2,895 plus .000167 of all assets;

(d) \$100 million or more but less than \$500 million, \$9,795 plus .000098 of all assets;

(e) \$500 million or more but less than \$1 billion, \$22,795 plus .000072 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$24,795 plus .000070 of all assets;

(g) \$2 billion or more but less than \$3 billion, \$26,795 plus .000069 of all assets;

(h) \$3 billion or more but less than \$4 billion, \$29,795 plus .000068 of all assets;

(i) \$4 billion or more, \$33,795 plus .000067 of all assets.

(4) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.503 for each trust company subject to the Director's jurisdiction is \$2,000 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.

(5) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 and 713.090 for each extranational institution is: If Oregon assets are:

(a) Less than \$10 million, \$845 plus .000310 of all assets;

(b) \$10 million or more but less than \$25 million, \$2,545 plus .000140 of all assets;

(c) \$25 million or more but less than \$100 million, \$3,545 plus .000100 of all assets;

(d) \$100 million or more but less than \$500 million, \$6,745 plus .000068 of all assets;

(e) \$500 million or more, but less than \$1 billion, \$10,245 plus .000061 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$15,245 plus .000056 of all assets;

(g) \$2 billion or more, \$17,245 plus .000055 of all assets.

(6) Subject to section (10) of this rule, the annual regulatory fee assessment for an out-of-state bank shall be \$1,500 multiplied by the branches the institution had in Oregon at the end of the calendar year immediately preceding the due date of the assessment.

(7) The fees assessed by this rule are not subject to prorate or refund.

(8) If no fee is assessed during any year under sections (2), (4) or (6) of this rule because an insured institution did not have Oregon assets, or Oregon branches, during the calendar year immediately preceding the due date of the assessment, the insured institution may be charged for actual cost, if the Director participates in any examination of the institution during the same calendar year. Actual cost shall be determined in the same way as provided in OAR 441-500-0030.

(9) All fees assessed under sections (3) to (6) of this rule are due and payable within 30 days of invoice.

(10)(a) The Director may by order reduce the fees assessed for any specific year.

(b) Effective January 1, 1999, when a fee is assessed under sections (3) to (6) of this rule, the assessment shall not be less than:

(A) \$5,000 for an insured institution, including a savings association, under section (3) and an out-of-state bank under section (6);

(B) \$2,500 for a trust company under section (4) and an extranational institution under section (5).

(11) The charges for special examination and special attention provided in OAR 441-505-1110 are in addition to and not in lieu of the fees assessed by this rule.

Stat. Auth.: ORS 705.620

Stats. Implemented: ORS 706.530 & ORS 722.606

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; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0020

#### 441-500-0030

##### Charges for Special Examinations and Special Attention for Banks, Trust Companies, Savings Banks, Extranational Institutions and Savings Associations

(1) Applicability. This rule applies to a banking institution, non-Oregon institution, savings institution and a holding company of an Oregon bank and trust company, but not a federal bank.

(2) In addition to the schedule of fees adopted in OAR 441-500-0020, "Actual costs" as charged for special examinations includes:

(a) \$60 an hour for each of the Director's staff assigned to the special examination for time performing the examination, writing reports and related administrative tasks;

(b) Reasonable actual cost to the Director for a consultant hired for the particular assignment or for other state staff assigned to the matter; and

(c) Reasonable actual travel and per diem costs incurred by the Director or staff.

Stat. Auth.: ORS 706.544 & ORS 715.045

Stats. Implemented: ORS 706.544 & ORS 715.045

Hist.: FID 2-1986, f. & ef. 3-7-86; Renumbered from 805-002-0110; Suspended by FCS 3-1997(Temp), f. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0030

## DIVISION 505

### BANKING SECTION (IN GENERAL)

#### 441-505-1100

#### Definitions

(1) Applicability. Statutory definitions are in ORS 706.005 and 706.008. The definitions in this rule consolidate definitions for rules in OAR 441 division 505.

(2) As used in the Bank Act and related rules, unless the context requires otherwise:

(a) "Commercial bank as defined in ORS 706.005" means an insured institution as defined in ORS 706.008, but does not include a savings association;

(b) "FFIEC" means the Federal Financial Institutions Examination Council;

(c) "Financial institution as defined in ORS 706.005" means a "financial institution" as defined in ORS 706.008; and

(d) "Institution, savings bank, stock savings bank, national bank, foreign institution or extranational institution as defined in ORS 706.005" means a "bank" when referring to "Institution, savings bank, stock savings bank, national bank or foreign institution" in ORS 706.008 and "extranational institution" as defined in ORS 706.008.

Stat. Auth.: ORS 706.005 & ORS 706.008

Stats. Implemented: ORS 706.790

Hist.: BB 13, f. & ef. 3-5-76; Renumbered from 805-001-0001; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-500-0000

#### 441-505-1110

##### References to Federal Statutes and Regulations

Pursuant to ORS 706.015, references in the Bank Act to Federal Statutes and regulations shall be construed to refer to statutes or regulations in effect on June 30, 2003, unless specifically provided otherwise in the Bank Act.

Stat. Auth.: ORS 706.015

Stats. Implemented: ORS 706.015

Hist.: FCS 1-2003, f. & cert. ef. 10-06-03

#### 441-505-1120

##### Report of Oregon Deposits

(1) Reporting Unit. This rule applies to:

(a) All Oregon commercial banks and Oregon savings banks;

(b) All non-Oregon institutions and federal banks that hold deposits of the State of Oregon or any political subdivision thereof where the institution or bank meets the requirements of ORS 714.045; and

(c) All insured institutions or trust companies authorized to take deposits in this state or to do trust business in this state that certify under ORS 295.005(2)(c) to the State Treasurer that the insured institutions or trust companies will furnish reports of Oregon deposits.

(2) Report date. A report shall be filed with the Director showing deposits as of June 30 of each year. The report shall be submitted concurrently with the filing with the federal supervisory agency.

(3) Report Form and Contents. A copy of the Summary of Deposits filed with the FDIC, or the Director's "Report of Deposits" shall be used for reporting deposits, provided that:

(a) An Oregon chartered commercial or savings bank shall file its complete Summary of Deposits Report; and

(b) Non-Oregon institutions and federal banks complying with this rule shall provide deposits for each Oregon branch.

(4) The director reserves the right to call for additional deposit reports by Order.

Stat. Auth.: ORS 714.075

Stats. Implemented: ORS 714.075

Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-510-0341

#### 441-505-1130

##### Call Reports

(1) Reporting Unit. This rule applies to banks, other than federal banks; and extranational institutions engaged in banking business in this state.

(2) Reports Called For. The Director calls for a quarterly report of condition, earnings and dividends.

(3) Report Form and Contents. The report shall be based on the information provided in FFIEC document, "Consolidated Report of



Condition and Income and Subsidiary Statement (hereafter "Report").

(a) A reporting unit that submits a "hard copy Report" to its federal supervisory agency shall concurrently file with the Director a copy of the same Report it files with the federal supervisory agency.

(b) A reporting unit that files its Report electronically with the federal supervisory agency shall notify the Director in writing that it makes such electronic filings. Only one notice to the Director is required, unless the reporting unit changes its method of reporting to the respective federal supervisory agency, in which case it shall notify the Director of the change.

Stat. Auth.: ORS 706.630

Stats. Implemented: ORS 706.630

Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-510-0342

#### 441-505-1140

##### **Additional Reports Covering Regulation O; Balance Due From All Depositories; and Report of Servicers**

All Oregon banks, and Oregon trust companies doing banking business, shall file the additional reports required by this rule.

(1) Regulation O Report. A copy of each quarterly "Regulation O Report" filed with the appropriate federal supervisory agency shall be concurrently filed with the Director.

(2) Report of Balances Due From All Depository Institutions. A Report of balances due from all depository institutions shall be filed quarterly, concurrently with the Call Reports required by OAR 441-505-1130. The Report shall be on Director's form, "Due From Quarterly Banking Report" or a reasonable reproduction of the report.

(3) Report of Servicer Information. A report of servicer information, identifying companies providing specified services, shall be filed quarterly, concurrently with the Call Reports required by OAR 441-505-1130. The Report shall be on Director's form, "Servicer Information Quarterly Banking Report" or a reasonable reproduction of the report.

Stat. Auth.: ORS 706.655

Stats. Implemented: ORS 706.655

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; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-540-0060

#### 441-505-1150

##### **Report of Trust Assets**

(1) Reporting Unit. All companies doing trust business in Oregon and all Oregon banks having trust company powers shall file a Report of Fiduciary Activity ("Report") with the Director.

(2) The Report shall be a copy of Form FFIEC, Schedule RC-T – Fiduciary and Related Services, which the institution is required to file with its federal supervisory agency.

(3) The Report shall be filed with the Director with the same frequency and concurrently with the federal filing.

Stat. Auth.: ORS 706.630

Stats. Implemented: ORS 706.630(4)

Hist.: FCS 3-1997(Temp), f. & cert. ef. 10-6-97; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-510-0344; FCS 1-2002, f. & cert. ef. 5-23-02

#### 441-505-2020

##### **Exchange of Real Property for Stock**

(1) An Oregon commercial bank, trust company or savings bank that applies for permission to accept real property in exchange for stock at the initial formation of capital shall file the following documents with the Director before accepting or committing to accept real property and improvements in exchange for stock:

(a) An appraisal within the scope of licensure of a General Appraiser or Residential Appraiser certified by the Oregon Appraiser Certification and Licensure Board, or like person approved by the Director in the case of real property located outside of this state, that is dated or updated within 30 days of the application, provided there is no material change to the appraised property within the 30 day period;

(b) Commitments or sales of stock for cash received to the date of the application; and

(c) A business plan adopted by the board:

(A) That includes the intended use or disposition of the property within a period that is consistent with the Bank Act for such property; and

(B) That shows a prudent and reasonable business purpose for such an exchange.

(2) The Director shall consider the business plan, capital adequacy, liquidity and management capabilities in determining whether the proposal is prudent and reasonable.

Stat. Auth.: ORS 707.050

Stats. Implemented: ORS 707.050

Hist.: FCS 1-1998, f. & cert. ef. 3-31-1998

#### 441-505-3010

##### **Insurance Activity Report**

(1) Applicability.

(a) Except as provided in subsection (b) of this section, this rule applies to:

(A) All Oregon banks, Oregon savings banks and Oregon trust companies that acquire subsidiaries or invest in companies that engage in or intend to engage in insurance agency activities as a licensee under ORS 744.002; and

(B) All bank holding companies that are subject to ORS 715.075.

(b) Any entity described in subsection (a) that received permission from the Director to conduct insurance activities prior to the effective date of this rule is not required to reapply for permission but is required to comply with the reporting requirements in section (4) of this rule.

(2) Application for Permission. Applicant shall file a written request for permission with the Director. The request shall:

(a) Describe the activities to be performed, identify the persons who will provide the services;

(b) Provide a business plan for this activity; and

(c) If a subsidiary or investment in a separate insurance agent is involved, additionally describe the details of the transaction including amount to be invested and identity of additional shareholders, if any.

(3) The Director shall issue to the applicant, upon completion of the review, an order granting or denying permission to engage in insurance activities.

(4) Report. All entities engaged in insurance activities under this rule shall file a report with the Director.

(a) The report shall be on the Director's Form, "REPORT OF INSURANCE ACTIVITIES" and shall disclose for the preceding calendar year:

(A) Total number of insurance policies sold;

(B) Insurance policies sold in each class of insurance described in ORS 744.115(1)(a) to (l) and (n);

(C) Total premium income from insurance policies sold;

(D) Total commission income from insurance policies sold; and

(E) Amendments since the last reporting period to the institution's business plan for insurance activity.

(b) The report shall be filed annually no later than March 31 of each year.

Stat. Auth.: ORS 708A.120(7) & ORS 716.594

Stats. Implemented: ORS 708A.120(7) & ORS 716.594

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; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0000

#### 441-505-3020

##### **Property Acquired for or Used for Place of Business; Disposition if Not Used**

(1) An institution shall sell or dispose of real property referred to in ORS 708A.175:

(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 reused for a business purpose within two years after the business use is discontinued.

(2) The Director may grant an extension of the two-year period if justified by an asset utilization plan which is consistent with the institution's business plan.

(3) The Director shall also consider the capital adequacy, liquidity, profitability, cash flow and management capabilities in determining whether the proposal is prudent and reasonable.

Stat. Auth.: ORS 708A.175

Stats. Implemented: ORS 708A.175

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-024-0115; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0030; FCS 2-2004, f. & cert. ef. 8-5-04

#### 441-505-3030

##### Appraisal Required

Real estate acquired by an institution as a result of a loan shall be appraised at the time of such acquisition unless an appraisal or appraisal update was made within six months of the acquisition, and there is no material change in the condition of the appraised property between the appraisal or update and acquisition. If the carrying (book) value of the real estate exceeds the appraised value on acquisition the difference shall be immediately charged off. ORS 708A.590, as relevant, shall thereafter be followed.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.175(3)

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-024-0130; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0050

#### 441-505-3040

##### Real Estate Sales Contracts

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 706.790

Stats. Implemented: ORS 708A.195

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-024-0140; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0060

#### 441-505-3050

##### Guidelines for Exceeding Restrictions on Ownership of Real and Personal Property Used in Business

(1) A request for authorization to exceed the limitations of ORS 708A.560 shall contain:

- (a) Details of the proposal;
- (b) The reasons relied on for exceeding the limitations;
- (c) An asset utilization plan which is consistent with the institution's business plan; and
- (d) Such additional information required by the Director.

(2) The Director shall also consider the capital adequacy, liquidity, profitability, cash flow and management capabilities in determining whether the proposal is prudent and reasonable.

Stat. Auth.: ORS 708A.560

Stats. Implemented: ORS 708A.560.

Hist.: BB 4-1978, f. 7-18-78, ef. 7-20-78; Renumbered from 8050-24-0160; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0080

#### 441-505-3060

##### Public Funds Deposits

For purposes of ORS 708A.535(4), the term "public funds" shall include deposits belonging to any state, or agency or instrumentality of that state, in which the financial institution maintains a branch, that may be deposited to the official credit of the appropriate government official charged with the safekeeping of funds of that state, or agency or instrumentality of that state.

Stat. Auth.: ORS 706.795 & 709.030

Stats. Implemented: ORS 708A.535 & 709.030

Hist.: FCS 3-2002, f. & cert. ef. 10-25-02; FCS 2-2004, f. & cert. ef. 8-5-04

#### 441-505-4010

##### Exemption for Banking Institutions

(1) An exemption is created under ORS 709.030(4) from the requirements of trust company licensing for:

(a) A non-Oregon institution; extranational institution; or "foreign association" as defined in ORS 722.005, when the entities are involved in any activity described in Section (2) of this rule; and

(b) A non-Oregon institution; extranational institution; or foreign association, that indirectly engages in any activity covered in

Subsection (2) of this rule because of its beneficial interest in a pool of notes secured by real estate mortgages or trust deeds.

(2) Application. The exemption applies to:

(a) The taking, acquiring, holding and enforcement of notes secured by real estate mortgages or trust deeds or making commitments to purchase such notes;

(b) The foreclosing of mortgages and trust deeds in the courts of this state, acquiring the mortgaged property, holding and operating the property for a period not exceeding five years or disposal of the property.

Stat. Auth.: ORS 709.030(4)(g)

Stats. Implemented: ORS 709.030(4)(g)

Hist.: FCS 1-1998, f. & cert ef. 3-31-98

#### 441-505-4020

##### Exemption for Out of State Trust Company for Isolated Transactions or Property Holding Transactions in This State

An exemption from the requirements of trust company licensing is created under ORS 709.030(4) for an out-of-state trust company having no offices in this state, that:

(1) Engages in an isolated trust company activity in this state (a trust company transaction that is completed within 30 days and is not one in the course of repeated and successive transactions of a like nature in this state); or

(2) Holds Oregon property in trust for a non-resident beneficiary.

Stat. Auth.: ORS 709.030(4)(g)

Stats. Implemented: ORS 709.030(4)(g)

Hist.: FCS 1-1998, f. & cert ef. 3-31-98

#### 441-505-4030

##### Trust Company Exemption; Court Appointed Fiduciaries

(1) As authorized by ORS 709.030(4)(g), an exemption from trust company licensing as required by ORS 709.005(1) is hereby created for any person appointed as a Fiduciary by a court of competent jurisdiction.

(2) As authorized by ORS 709.030(4)(g), an exemption from trust company licensing as required by ORS 709.005(1) is hereby created by any individual appointed as a Personal Representative, as defined in ORS 111.005, or as a Special Administrator as described in ORS 113.005, by a court of competent jurisdiction.

Stat. Auth.: ORS 706.795 & 709.030

Stats. Implemented: ORS 708A.535 & 709.030

Hist.: FCS 3-2002, f. & cert. ef. 10-25-02

#### 441-505-6010

##### Deposits Required by Extranational Institutions

(1) The deposit required to be posted by extranational institutions under ORS 713.025(2) shall be:

(a) Five percent of the total liability of each office in this state to Oregon based depositors, plus all acceptances, but excluding accrued expenses and amounts due to and other liabilities of offices, branches, agencies and subsidiaries of the extranational institution; and

(b) An additional \$2,500,000 for the protection of depositors and the public interest.

(2) The requirements of subsection (1)(a) shall be adjusted quarterly by the institution with notice to the Director, based on growth or loss of Oregon based deposits for the ending quarter, provided the amount of change is in excess of \$25,000.

Stat. Auth.: ORS 713.025

Stats. Implemented: ORS 713.025(2)

Hist.: FCS 1-1998, f. & cert ef. 3-31-98

#### 441-505-9010

##### Authorizing a Dividend of Less Than Four Percent

A dividend of less than four percent may be paid under ORS 716.780, if required to maintain the safety and soundness of the savings bank.

Stat. Auth.: ORS 716.780

Stats. Implemented: ORS 716.780

Hist.: BB 13, f. & ef. 3-5-76, Renumbered from 805-063-0055; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-640-0010

## DIVISION 710

## CREDIT UNIONS (IN GENERAL)

**441-710-0000****Definitions**

As used in OAR 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 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, 2001, 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 \$375 plus .0001920 of all assets;

(b) \$10 million or more but less than \$20 million, is \$1,234 plus .000173 of all assets;

(c) \$20 million or more but less than \$50 million, is \$1300 plus .000165 of all assets;

(d) \$50 million or more but less than \$100 million, is \$1500 plus .0001120 of all assets;

(e) \$100 million or more but less than \$200 million, is \$7100 plus .000099 of all assets;

(f) \$200 million or more is \$7,906 plus .000095 of all assets; or

(g) If the credit union is a corporate credit union, effective January 3, 2000, the fee schedule is \$16,800 plus .0000345 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 years for which a fee has been paid;

(b) Is not subject to pro ration if the credit union operated during any part of the calendar year during which the merger, conversion, liquidation or dissolution occurred.

Stat. Auth.: ORS 705.620; 723.102; 723.532

Stats. Implemented: ORS 723.114; 723.532

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; FCS 3-2000, f. & cert. ef. 3-9-00; FCS 3-2001, f. & cert. ef. 2-13-01

**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 & ORS 723.106

Stats. Implemented: ORS 723.022 & ORS 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, 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 March 31, 2000.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156 & ORS 723.102

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0050; FCS 6-2000; f. & cert. ef. 3-31-00

**441-710-0030****Definitions**

As used in this section:

(1) "Members of the immediate family" includes:

(a) All of the following relatives of the member: grandparents, parents, spouse, children, stepchildren, grandchildren, brothers, sisters, half-brothers, half-sisters, aunts and uncles;

(b) The domestic partner of a member provided the domestic partner and the primary member attest that the following conditions apply:

(A) They share the same regular and permanent address;

(B) Have a close personal relationship; and

(C) Have agreed to be jointly responsible for basic living expenses and each others common welfare; and

(c) The immediate family members of those persons described in (a) and (b) above.

(2) All members of record as of March 31, 2000, are allowed to retain membership in the credit union.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.156, ORS 723.102 & ORS 723.172(3)

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0055; FCS 6-2000; f. & cert. ef. 3-31-00

**441-710-0035****Community Charter Applications**

A credit union applying for a community charter must complete an application to include at least the following information:



(1) Written authorization for the application signed by the Board of Directors.

(2) Bylaws or amendment to bylaws showing current and revised field of membership.

(3) Identification of the area the credit union wishes to serve and the total population of the proposed community. Quote source for the population figures.

(4) If the area to be served consists of more than one precinct, district, city, county, or other defined boundaries, a detailed description of how the persons in the area interact or share interests.

(5) Map of proposed well-defined local community, neighborhood or rural district.

(6) Most recent monthly financial statement, including income and expense statement; and

(7) Business plan showing how credit union will provide service to proposed community, pro forma financial statements for the first three years of operation including assumptions used, and facility locations. The plan should include information on services and products offered by the institution.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172(2) & ORS 723.172(5)

Hist.: FCS 6-2000; f. & cert. ef. 3-31-00

#### **441-710-0036**

##### **Name of Community Charter**

A credit union that is a community charter must have the words "community credit union" in its name.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.012(2)

Hist.: FCS 6-2000; f. & cert. ef. 3-31-00

#### **441-710-0037**

##### **Procedures for Amending Bylaws on Community Charter Field of Membership**

(1) When a credit union wishes to expand its field of membership, it shall amend its bylaws to describe the geographic boundaries to be added to the field of 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) Map of proposed well-defined local community, neighborhood or rural district, showing both the existing field of membership and the proposed field of membership to be added;

(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; and

(f) Any other evidence in support of the application.

(2) Any requirement in section (1) of this rule may be waived as it relates to a particular application, if the Director determines that complying with the requirement is not necessary for the purposes of carrying out the provisions of ORS Chapter 723.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.022 & ORS 723.172(8)

Hist.: FCS 6-2000; f. & cert. ef. 3-31-00

#### **441-710-0038**

##### **Mergers of Community Charters**

(1) A community charter credit union cannot merge into an occupational or associational credit union unless the situation involves a well-defined local community, neighborhood or rural district that is underserved by other depository institutions as referenced in ORS 723.172(7)(a) or is an emergency merger under section (4) of this rule.

(2) The merger should not impact the safety and soundness of the continuing credit union; and

(3) The continuing credit union maintains a service facility within the community boundaries. "Service Facility" means a place

where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch that belongs to the shared branching network, a mobile home, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. It does not include an ATM.

(4) For purposes of this rule, "emergency merger" involves the director's determination that:

(a) A credit union is insolvent or likely to become insolvent;

(b) Expeditious action is necessary;

(c) Other reasonable alternatives are not available; and

(d) The public interest would best be served by approving the merger.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172 & 723.682

Hist.: FCS 6-2000; f. & cert. ef. 3-31-00; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-710-0070**

##### **Procedures for Amending Bylaws on Field of Membership**

(1) When a credit union wishes to expand its field of membership, it shall amend its bylaws to describe the group or groups, or geographic boundaries if it is a community charter, to be added to the field of 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) If the amendment proposes to add a group with a separate bond of occupation or association, the credit union shall submit evidence:

(A) That the group does not contain more than 3,000 members;

(B) That the group could not feasibly or reasonably establish a new credit union due to a lack of volunteer resources, financial resources or other factors important to the likelihood of successful formation of a new credit union; or

(C) That the group proposes to transfer to the credit union in connection with a merger, consolidation or transfer approved by the director, or in connection with the liquidation of another credit union.

(h) Any other evidence in support of the application, including relevant correspondence 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.

(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 723.102

Stats. Implemented: ORS 723.022, ORS 723.156 & ORS 723.172

Hist.: FCS 2-1989, f. 1-18-89, cert. ef. 2-1-89; Renumbered from 805-072-0075; FCS 6-2000, f. & cert. ef. 3-31-00; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-710-0075**

##### **Underserved Areas**

(1) A credit union may apply to the Director to add any underserved, well-defined local community, neighborhood or rural district to its field of membership if:

(a) The area is underserved by other depository institutions; and

(b) The credit union is prepared and able to establish and maintain an office or facility within the area to be added.

(c) "Underserved by other depository institutions" means the aggregate number of depository institution branches per capita is below the state average as established by the Director on an annual basis as of December 31.

(d) "Office or facility" means a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes:

(A) A credit union owned branch,

(B) A shared branch that belongs to a shared branching network,

(C) A mobile branch,

(D) An office operated on a regularly scheduled weekly basis, or

(E) A credit union owned electronic facility that meets, at a minimum, the requirements of this subsection. An ATM, by itself, does not constitute an "office or facility."

(2) A credit union applying for an underserved area must complete and submit to the Director an application to include at least the following information:

(a) Copy of the Board of Director minutes approving the request for expansion to an underserved area;

(b) Bylaws or amendment to bylaws showing the current and revised field of membership;

(c) Identification of the area the credit union wishes to serve and the population of the proposed community. Quote the source for the population figures;

(d) Map of proposed area;

(e) Data and the source of that data that demonstrates the area is underserved by other depository institutions.

(f) Most recent monthly financial statement, including income and expense statement;

(g) Business plan showing how the credit union will provide service to the underserved area; and

(h) Information on the proposed office or facility location as required by ORS 723.172(7)(b).

(3) The credit union may establish that the well-defined local community, neighborhood or rural district is underserved by other depository institutions by showing that the area:

(a) Encompasses or is located in an empowerment zone or enterprise community designated under section 1391 of the Internal Revenue Code of 1986, or

(b) Meets at least one of the following objective criteria of economic distress developed by the Community Development Financial Institutions Fund:

(A) The percentage of the population living in poverty is at least 20%.

(B) The median family income shall be at or below 80% of:

(i) The Metropolitan Area median family income or the National Metropolitan Area median family income, whichever is greater for an Investment Area within a Metropolitan area; or

(ii) The statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family

income, whichever is greater for an Investment Area outside a Metropolitan area;

(C) The unemployment rate as reported in the most recently completed Unemployment Rates Report by the Oregon Department of Employment or the decennial census published by the US Bureau of the Census, whichever is more current, is at least 1.5 times the national average;

(D) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20% and the area has significant unmet needs for loans or equity investments;

(E) In areas located outside of a Metropolitan Area:

(i) The county population loss in the period between the most recent decennial census and the previous decennial census is at least 10%; or

(ii) The county net migration loss (outmigration minus immigration) over the five year period preceding the most recent decennial census is at least 5%; or

(F) The area to be added is an "investment area", as defined in section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703 (16)).

(4) After the application is complete, the Director's staff will review the application, determine whether the various criteria of the Director are met and determine whether the granting of the application will adversely impact the safety and soundness of the applicant. The Director will approve or deny the application accordingly and provide the applicant with the Director's determination and the reasons for the determination.

(5) An applicant whose application is denied will have the right to a contested case hearing and rights of appeal pursuant to the provisions of ORS Chapter 183.

Stat. Auth.: ORS 723.102

Stats. Implemented: ORS 723.172(5)(d); (7) & (8)

Hist.: FCS 5-2002, f. 11-6-02 cert. ef. 11-14-02

##### **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 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 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 723

Stats. Implemented: ORS 723.106 & ORS 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 723

Stats. Implemented: ORS 723.116(1) & ORS 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 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 723

Stats. Implemented: ORS 723.116 & ORS 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 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 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 723

Stats. Implemented: ORS 723.156 & ORS 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 723

Stats. Implemented: ORS 723.156 & ORS 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 USC 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 723

Stats. Implemented: ORS 723.156 & ORS 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 USC 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 USC 1757 (5)(A)(i)**)" means ORS 723.502.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 723

Stats. Implemented: ORS 723.156 & ORS 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 USC 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 USC 1787(c)(3)**," "**12 CFR 724.1**," and "**12 CFR 724.2**" mean ORS 723.152(22).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 723

Stats. Implemented: ORS 723.152(22) & ORS 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 USC 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 **12 CFR 701.22**;

(C) An undertaking that it will not be an originating 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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 723

Stats. Implemented: ORS 723.006 & ORS 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 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 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 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 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 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 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 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.

(b) 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.:

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 723

Stats. Implemented: ORS 723.646

Hist.: FID 5-1986, f. & ef. 8-27-86; Renumbered from 805-072-0450

### 441-710-0400

#### Loans to Officials.

(1) Any single loan to a person described in ORS 723.532(2) or the aggregate of all outstanding loans for which such person is directly or indirectly obligated to repay which exceeds \$50,000 shall be approved by the Board of Directors.

(2) If the credit union has a staff of three persons or less, all loans to a person described in ORS 723.532(2) shall be approved by the Board of Directors.

(3) This rule shall not apply to share secured or deposit secured loans.

Stat. Auth.: ORS 723.532(4)

Stat. Implemented: ORS 723.532(2)(b)

Hist.: FCS 3-2001, f. & cert. ef. 2-13-01

## 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 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 723

Stats. Implemented: ORS 723.152(24), ORS 723.156 & 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 805-073-0010

### 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 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 723.102, ORS 723.156 & ORS 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 accountholder 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 723.102, ORS 723.156 & ORS 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)(l)(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, ORS 723.156 & ORS 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, ORS 723.156 & ORS 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 be 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, ORS 723.156 & ORS 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, ORS 723.156 & ORS 723.730

Stats. Implemented: ORS 723.730

Hist.: FCS 5-1992, f. & cert. ef. 12-21-92

#### 441-720-0160

##### Fidelity Bond Coverage for Corporate Credit Union

A corporate central credit union referred to in ORS 723.730, shall:

(1) On and following January 1, 1998, meet the requirements of **12 CFR 704.18.7**, Fidelity Bond Coverage, except as provided in section (2) of this rule.

(2) For the purpose of meeting Oregon requirements for fidelity bond coverages, all references to the "National Credit Union Administration" or "NCUA" in section (1) and (2) of this rule shall mean the Director of the Department of Consumer and Business Services acting through the Administrator of the Division of Finance and Corporate Securities.

Stat. Auth.: ORS 723.730(2)

Stats. Implemented: ORS 723.730(2)

Hist.: FCS 4-1997, f. 12-12-97, cert. ef. 1-1-98

##### Member Business Loans

#### 441-720-0300

##### Definitions

(1) "Associated member" means any member with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower.

(2) "Construction or development loan" means a financing arrangement for acquiring property or rights to property, including land or structures, with the intent to convert it to income-producing property such as residential housing for rental or sale; commercial use; industrial use; or similar uses.

(3) "Director" means the Director of the Department of Consumer and Business Services.

(4) "Immediate family member" means a spouse or other family member living in the same household.

(5) "Loan-to-value ratio or LTV ratio" means the aggregate amount of all sums borrowed including outstanding balances plus any unfunded commitment or line of credit from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(6) "Net Worth" means retained earnings as defined under Generally Accepted Accounting Principles. Retained earnings normally includes undivided earnings, regular reserves and any other appropriations designated by management or regulatory authorities. It does not include the Allowance for Loan and Lease Losses account.

(7) "NCUA" means the National Credit Union Administration.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0305

##### Member Business Loan

(1) A member business loan includes any loan, line of credit, or letter of credit (including any unfunded commitments), of which the proceeds will be used for the following purposes:

(a) Commercial;

(b) Corporate;

(c) Other business investment property or venture; or

(d) Agricultural.

(2) Exceptions. The following are not considered a member business loan:

(a) A loan secured by a lien on a 1 to 4 family dwelling that is the member's primary residence;

(b) A loan fully secured by shares in the credit union making the extension of credit or fully secured by deposits in other financial institutions;

(c) Loan(s) to a member or an associated member which, when added together, are equal to less than \$50,000.

(d) A loan where a federal or state agency (or any political subdivision of a state) fully insures or guarantees repayment, or provides an advance commitment to purchase the loan in full; or

(e) A loan granted by a corporate credit union to another credit union.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0310

##### Implementation of Member Business Loan Program

(1) It is the responsibility of the board of directors to:

(a) Adopt specific member business loan policies and review them at least annually.

(b) Send a copy of the policies to the Director prior to beginning the program.

(c) Make certain that management of the credit union:

(A) Utilizes the services of an individual with at least two years direct experience with the type of lending the credit union will be engaging in; except that,

(B) If the credit union is engaged in construction and development lending, the qualified individual must have five years direct experience.

(d) The qualified individual does not have to be on staff, but the expertise must be readily available.

(e) The experience requirement can be met through various approaches. For example, the credit union may use:

(A) The services of a credit union service organization,

(B) An employee of another credit union,

(C) An independent contractor, or

(D) Other third parties.

(2) The actual decision to grant a loan must be made by the originating credit union.

(3) A Credit Union Service Organization (CUSO) may not grant or fund a member business loan, but may provide member business loan services to a credit union.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02



#### 441-720-0315

##### Member Business Loan Policies and Procedures

Prior to engaging in member business lending, a credit union must adopt member business loan policies and procedures. At a minimum, the policies and procedures must address the following:

- (1) Types of business loans to be made;
  - (2) Identification of trade area to be served;
  - (3) The maximum amount of credit union assets, relative to net worth, that will be invested in member business loans;
  - (4) The maximum amount of credit union assets, relative to net worth, that will be invested in a given category or type of member business loan;
  - (5) The maximum amount of credit union assets, relative to net worth, that will be loaned to any one member or group of associated members, subject to 441-720-0330;
  - (6) The qualifications and experience (minimum of 2 years experience) of personnel involved in making and administering business loans;
  - (7) Initial and ongoing analysis and documentation of the ability of the borrower to repay the loan;
  - (8) Receipt and periodic updating of financial statements and other documents, including tax returns;
  - (9) Documentation sufficient to support each request for an extension of credit, or an increase in an existing loan or line of credit, except where the board of directors finds that the required documentation is not generally available for a particular type of loan and states the reasons for those findings in the credit union's written policies. The documentation must include the following:
    - (a) Balance sheet, income statement and tax returns;
    - (b) Cash flow analysis, history of borrower and business, and analysis of leveraging;
    - (c) Comparison with industry average or similar analysis;
    - (10) Collateral requirements must include all of the following:
      - (a) Loan-to-value ratios;
      - (b) Determination of value;
      - (c) Determination of ownership;
      - (d) Steps to be taken to secure various types of collateral;
      - (e) Frequency of reevaluation of the value and marketability of the collateral; and
      - (f) Insurance, if applicable.
    - (11) Interest rates and maturities of business loans;
    - (12) General loan procedures which include:
      - (a) Loan monitoring; including loan review and grading system;
      - (b) Servicing and follow-up;
      - (c) Collections;
      - (d) Loan officer limits; and
      - (e) Borrower Documentation; such as loan agreement, note, security agreement, borrowing authority, and commitment letter.
    - (13) Identification of individuals prohibited from receiving member business loans.
    - (14) Procedures for adequate safeguards to minimize potential environmental liability.
- Stat. Auth.: ORS 723.102 & ORS 723.156  
 Stats. Implemented: ORS 723.156 & ORS 723.502  
 Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0320

##### Collateral and Security Requirements

- (1) All member business loans must be secured by collateral in accordance with this section, except for the following:
  - (a) A credit card line of credit granted to nonnatural person members that is limited to routine purposes normally made available under such lines of credit; or
  - (b) A loan made by a credit union where the loan and the credit union meet each of the following criteria:
    - (A) The amount of the loan does not exceed \$50,000;
    - (B) The aggregate of unsecured member business loan under this paragraph (1)(b) does not exceed 10% of the credit union's net worth;
    - (C) The loan is guaranteed or insured by a financially responsible guarantor or insurer and the credit union has determined that

the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement;

- (D) The credit union has a net worth of at least 7%; and
- (E) The credit union submits reports to the Division with its NCUA 5300s, providing numbers and such other detail as may be required by the Director to demonstrate compliance with this paragraph (1)(b).
- (2) In the case of a member business loan secured by collateral on which the credit union will have a first lien, the credit union may grant the loan with a LTV ratio in excess of 80% only where the value in excess of 80% is:
  - (a) Covered through acquisition of private mortgage or equivalent type insurance provided by an insurer acceptable to the credit union; or
  - (b) Insured or guaranteed, or subject to advance commitment to purchase, by an agency of the Federal government, state, or any of its political subdivisions. In no event may the LTV ratio exceed 95%;
  - (3) In the case of a member business loan secured by collateral on which the credit union will have a second priority lien, the credit union may not grant the loan with a LTV ratio in excess of 80%; and
  - (4) In the case of member business loans secured by the same collateral,
    - (a) On which the credit union will have a first lien as well as other lesser priority liens, the credit union may grant the loans with a LTV ratio in excess of 80% only if section (2) of this rule is satisfied. In no event may the LTV ratio exceed 95%; and
    - (b) On which the credit union will have lesser priority liens but no first lien, the credit union may not grant loans with a LTV ratio in excess of 80%.
  - (5) Principals, other than a not for profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501) must assume personal liability and guarantee the loan.

Stat. Auth.: ORS 723.102 & ORS 723.156  
 Stats. Implemented: ORS 723.156 & ORS 723.502  
 Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0325

##### Recordkeeping Requirements

The credit union must separately identify member business loans in its records and in the aggregate on its financial reports.

Stat. Auth.: ORS 723.102 & ORS 723.156  
 Stats. Implemented: ORS 723.156 & ORS 723.502  
 Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0330

##### Aggregate Loans to a Member or Associated Members

The aggregate amount of outstanding member business loans (including any unfunded commitments) to a member or group of associated members may not exceed the greater of:

- (1) 15% of the credit union's net worth; or
- (2) \$100,000.

Stat. Auth.: ORS 723.102 & ORS 723.156  
 Stats. Implemented: ORS 723.156 & ORS 723.502  
 Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0335

##### Calculation of the Aggregate 15% Limit

For purposes of complying with the provisions of OAR 441-720-0330, a credit union must:

- (1) Calculate the numerator by adding together the total outstanding balance of member business loans to any one member, or group of associated members. From this amount, subtract any portion:
  - (a) Secured by shares in the credit union;
  - (b) Secured by deposits in another financial institution;
  - (c) Fully or partially insured or guaranteed by any agency of the Federal government, state, or its political subdivisions;
  - (d) Subject to an advance commitment to purchase by any agency of the Federal government, state, or its political subdivisions; and
  - (2) Divide the numerator by the net worth of the credit union.

Stat. Auth.: ORS 723.102 & ORS 723.156  
 Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0340

##### Aggregate Member Business Loan Limit for a Credit Union

The aggregate limit on the amount of a credit union's member business loan outstandings, including any unfunded commitments, is the lesser of:

- (1) 1.75 times the credit union's net worth; or
- (2) 12.25 percent of the credit union's total assets.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0345

##### Exceptions to the Aggregate Member Business Loan Limit for a Credit Union

A credit union can qualify for an exception from the aggregate member business loan limit if the credit union meets any one of the following:

- (1) Designated as a low-income credit union in accordance with the requirements of 12 U.S.C. 1757a;
- (2) Participates in the Community Development Financial Institutions program;
- (3) Originally chartered for the purpose of making member business loans and can provide documentary evidence such as the charter, bylaws, business plan, field of membership, board minutes or loan portfolio.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0350

##### Exception Procedure

To obtain an exception:

- (1) The credit union must submit documentation to the Director substantiating it meets the criteria of one of the exceptions in 441-720-0345.
- (2) The Director shall notify the credit union of the Director's decision.
- (3) The Director will forward the agency's decision to NCUA.
- (4) If granted, the exception does not expire unless it is revoked by the Director.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0355

##### Construction and Development Lending

A credit union that makes a member business loan for construction and development of commercial or residential property is subject to the following requirements:

- (1) The aggregate of all such loans must not exceed 15% of net worth of the credit union. To determine the aggregate, a credit union may exclude any portion of a loan:
  - (a) Secured by shares in the credit union.
  - (b) Secured by deposits in another financial institution.
  - (c) Fully or partially insured or guaranteed by any agency of the federal government, state, or its political subdivisions; or
  - (d) Subject to an advance commitment to purchase by any agency of the federal government, or by a state government, or its political subdivisions;
- (2) The borrower must have a minimum of:
  - (a) 25% equity interest in the project being financed, except if the loan is for land development the equity interest must be 35%; and
  - (b) The funds may be released only after onsite, written inspections by qualified personnel and according to a preapproved draw schedule and any other conditions as set forth in the loan documentation.

- (3) The credit union may not make such loans unless it utilizes the services of an individual who has at least five years direct experience in development and construction lending.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0360

##### Classification of Member Business Loans to Reserve for Potential Losses

Non-delinquent member business loans may be classified based upon factors such as the adequacy of analysis, supporting documentation, or grades given based upon the financial strength of the borrower. The credit union must classify potential loss loans as either substandard, doubtful, or loss. The criteria for determining the classification of loans are:

(1) **SUBSTANDARD.** A substandard loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. The loan classified has a well-defined weakness or weaknesses that jeopardize the liquidation of debt. The loan is characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(2) **DOUBTFUL.** A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact status may be determined. Pending factors include: proposed merger, acquisition, or liquidation actions; capital injection; perfecting liens on collateral; and refinancing plans.

(3) **LOSS.** A loan classified loss is considered uncollectible and of such little value that its continuance as a loan is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0365

##### Minimum Reserves for Potential Loan Losses

The following schedule sets the minimum amount the credit union must reserve for classified loans:

###### Classification — Amount Required

Substandard — 10% of outstanding balance unless other factors (for example, history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

Doubtful — 50% of the outstanding balance.

Loss — 100% of the outstanding balance.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

#### 441-720-0370

##### Prohibited Member Business Loans

(1) A credit union may not grant a member business loan to the following:

- (a) The credit union's chief executive officer;
- (b) Any assistant chief executive officers;
- (c) The chief financial officer; or
- (d) Any associated member or immediate family member of anyone listed in subsections (a) through (c) of this section.

(2) Equity agreement/Joint Ventures. The credit union may not grant a member business loan if any additional income received by the credit union or senior management employees is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(3) Loans to directors. A credit union may not grant a member business loan to a director unless the board of directors approves in advance granting the loan and the director is recused from the decision making process.

Stat. Auth.: ORS 723.102 & ORS 723.156

Stats. Implemented: ORS 723.156 & ORS 723.502

Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0375**

**Available Waivers for Specific Loan Types**

A credit union may seek a waiver for a type of member business loan in the following areas:

- (1) Loan to value ratios under 441-720-0320.
- (2) Unsecured loan limit under 441-720-0320 not to exceed \$100,000.
- (3) Maximum loan amount to one borrower or associated group of borrowers under 441-720-0330.
- (4) Construction and development loan limits under 441-720-0355.
- (5) Requirement for personal liability and guarantee under 441-720-0320.

(6) If a credit union is requesting a waiver of appraisal requirements of 12 C.F.R. 722.3 from the NCUA, the credit union shall:

- (a) File the request with the Director; and
- (b) If the Director approves the request, the Director will promptly forward the request to the Regional Director of Region VI of the NCUA (or if it is the Corporate Credit Union to the Director of the Office of Corporate Credit Unions of NCUA) for decision under NCUA rules at 12 C.F.R. 723.12; or

(c) If the Director does not approve the request, the Director will return the request to the credit union with reasons for the disapproval and provide the NCUA with notice of the Director's decision.

(d) The waiver is not effective until the Regional Director of Region VI of the NCUA (or the Director of the Office of Corporate Credit Unions) approves it in accordance with NCUA rules at 12 C.F.R. 723.12.

Stat. Auth.: ORS 723.102 & ORS 723.156  
Stats. Implemented: ORS 723.156 & ORS 723.502  
Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**441-720-0380**

**Waiver Procedure**

(1) A credit union must submit a request to the Director to obtain a waiver under OAR 441-720-0375. The waiver request must contain the following:

- (a) A copy of the member business loan policy;
- (b) The higher limit sought, if applicable;
- (c) An explanation of the need to raise the limit, if applicable;
- (d) Documentation supporting the credit union's ability to manage this activity; and
- (e) Analysis of the credit union's prior experience making member business loans, including:
  - (A) The history of loan losses and loan delinquency;
  - (B) Loan volume and cyclical or seasonal patterns;
  - (C) Diversification;
  - (D) Concentrations of credit to one borrower or group of associated borrowers in excess of 15% of net worth;
  - (E) Underwriting standards and practices;
  - (F) Types of loans grouped by purpose and collateral;
  - (G) The qualifications of personnel responsible for underwriting and administering member business loans; and
  - (H) Any other information deemed relevant by the credit union or requested by the Director.

(2) The Director will:

- (a) Review the information provided by the credit union in its request;
- (b) Evaluate the level of risk to the credit union;
- (c) Consider the credit union's historical CAMEL composite and component ratings;
- (d) Notify the credit union when the waiver request is deemed complete;
- (e) Notify the credit union of the action taken within 45 calendar days of receiving a complete request, and, if the Director approves the waiver request as not detrimental to the safety and soundness of the credit union nor contrary to the public interest, issue an order subject to NCUA approval granting the waiver; and
- (f) Provide a copy of the waiver request under 12 C.F.R. 723.11 to NCUA, Region VI (or if it is the Corporate Credit Union to the Director of the Office of Corporate Credit Unions) for their review and approval.

(3) The waiver is not effective until the Director approves it by order.

(4) If granted, the waiver does not expire unless it is revoked by the Director.

Stat. Auth.: ORS 723.102 & ORS 723.156  
Stats. Implemented: ORS 723.156 & ORS 723.502  
Hist.: FCS 2-2002, f. & cert. ef. 8-27-02

**DIVISION 730**

**CONSUMER FINANCE**

**441-730-0000**

**Statutory Authority; Purpose**

(1) OAR 441-730-0000 to 441-730-0320 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.

Stat. Auth.: ORS 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; FCS 13-2001, f. & cert. ef. 12-27-01

**441-730-0005**

**Consumer Finance and Short-Term Personal Loan Licenses**

(1) The license issued pursuant to ORS 725.140 to a lender who makes loans secured by personal property, real property or unsecured loans which typically have periodic payments with terms longer than 60 days shall be a Consumer Finance License.

(2) The license issued pursuant to ORS 725.140 to a lender who makes Payday or Title loans shall be a Short-Term Personal Loan license and the lender shall be limited to loans enumerated on the license. This subsection does not apply to persons holding a Consumer Finance license.

(3) Title and Payday loan companies holding a Consumer Finance license on the effective date of this rule shall return the Consumer Finance license for cancellation and the Division shall issue a new Short-Term Personal Loan license to replace the original Consumer Finance license.

(4) No license shall be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the secretary of state.

Stat. Auth.: ORS 725.320 & ORS 725.505  
Stats. Implemented: ORS 725.140(1)  
Hist.: FCS 2-2000, f. & cert. ef. 2-15-00

**441-730-0010**

**Definitions**

(1) "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.

(2) "Borrower" means a natural person.

(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) "Consumer Finance Loan" means the loan of money:

- (a) In an amount of \$50,000 or less;
- (b) At a rate of interest which exceeds the limitation contained in ORS Chapter 82;
- (c) To a borrower, primarily for personal, family or household purposes.

(d) By a person who is in the business of making loans usually characterized by required periodic payments not including financial institutions defined in ORS 706.008.

(5) "Deferral charges" means the additional charge assessed by a Consumer Finance licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature



(6) "Extension" has the same meaning as "renewal" defined in section (13) of this rule.

(7) "License" means a Consumer Finance license or a Short-Term Personal Loan license issued under ORS 725.140.

(8) "Licensee" means a person licensed as a Consumer Finance licensee or a Short-Term Personal Loan licensee.

(9) "Loan" means a loan that is subject to the Act.

(10) "Payday loan" means a loan of money to a borrower primarily for personal, family or household purposes:

(a) Collateralized by a check(s) or bank draft(s) dated as of the date of the loan or later in the amount of the principal of the loan plus interest or deferral charges assessed by the lender;

(b) With a single payment payback;

(c) Made by a person who is in the business of making payday loans including making Short-Term Personal Loans which are collateralized by personal checks and made with the understanding that the lender will not process a check for an agreed to period of time, but not including financial institutions defined in ORS 706.008.

(11) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association or cooperative.

(12) "Renewal" of a loan means granting a borrower the right to postpone repayment of a Short-Term Personal Loan for a fee.

(13) "Roll-over" has the same meaning as "renewal" defined in section (12) of this rule.

(14) "Same day transaction" means a Short-Term Personal Loan made on the same day that a previous Short-Term Personal loan is paid-off and will be treated as a "renewal" defined in section (12) of this rule.

(15) "Short-Term Personal Loan" means:

(a) A Payday Loan;

(b) A Title Loan; or

(c) Any other loan made by a person in the business of making Short-Term personal loans designated by rule or order of the director.

(16) "Title Loan" means a loan as defined in ORS 725.600.

(17) A person is "in the business of making Short-Term personal loans" that are Payday Loans if the person is in the business of making loans to borrowers primarily for personal, family or household purposes, and the loans made are scheduled to be repaid, or for which the person can demand repayment in 60 or fewer days, but do not include loans with an acceleration clause triggered by a default.

(18) A person is "in the business of making Short-Term personal loans" that are Title Loans if the person meets the requirements of ORS 725.600.

Stat. Auth.: ORS 725.320 & 725.505

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; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04

### **Notes, Mortgages, and Collateral**

#### **441-730-0030**

##### **Fees, Charges Licensees Pay the Director**

(1) Effective January 1, 2005, the annual license fee under ORS 725.185 is \$520, 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 employee 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 725.185

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; FCS 1-2001, f. 1-22-01, cert. ef. 2-1-01; FCS 4-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 4-2004, f. 11-1-04, cert. ef. 1-1-05

#### **441-730-0050**

##### **Notes and Agreements Must Comply with ORS 725**

(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 ORS Chapter 725 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulations and in compliance with those statutes or regulations are considered in compliance with and authorized by ORS Chapter 725.

Stat. Auth.: ORS 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; FCS 13-2001, f. & cert. ef. 12-27-01

#### **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 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 the licensee's 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 "subject to state regulation" or both.

(2) A licensee or other person shall not, in any advertisement printed, displayed, published, distributed or broadcasted by the licensee or on the licensee's behalf, use any name other than the name under which the license is issued.

(3) A licensee shall retain a copy of all advertising for the period beginning with the date of the last examination in a designated licensed office, or with the prior approval of the Director, at another location until the material has been reviewed by an examiner.

(4) Notwithstanding the provisions of sections (1) and (2) of this rule, a licensee shall post their license in a prominent location which is conspicuous to the public, and the license issued by the Director shall contain a notice that the business is licensed and regulated by the Department of Consumer and Business Services. The notice shall provide the public with a toll-free telephone number for public inquiries or complaints.

Stat. Auth.: ORS 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; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01

**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 ORS Chapter 725 and these rules.

Stat. Auth.: ORS 725

Stats. Implemented: ORS 725.310 & ORS 725.140

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0050; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04

**441-730-0100****Officers and Directors of Licensee; Removal or Suspension; Request for a Hearing**

(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) A person who is suspended or removed under ORS 725.315 or 725.317 shall not 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 employee without receiving permission from the Director:

- (a) During the period of the suspension; or
- (b) After the effective date of the removal.

(3) A licensee subject to an order of suspension under the provisions of ORS 725.230(2) may, within 90 days after the date the order is issued or 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.

Stat. Auth.: ORS 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; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04

**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) Charges; and
  - (c) Repossessed property and sales of repossessed property
- (3) The receipt and disbursement of all charges 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:

- (A) The amount of the loan;
- (B) The type of security taken;
- (C) The rate of interest charged; and,

(D) 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;

- (A) The borrower's name and account number;
- (B) The date of death of the borrower;
- (C) The date proof of death was received by the licensee; and,
- (D) The disposition of the insurance proceeds with substantiating documents;

(c) Any litigation initiated by the licensee showing for each proceeding:

- (A) The borrower's name and account number;
- (B) The court where the proceeding is filed;
- (C) The date of filing; and

(D) When applicable, the date, and terms of any disposition of the matter.

(d) Information on files sent to a collection agency showing, for each file:

(A) The borrower's name, the account number;

(B) The original date of the loan, the due date of the loan, or last renewal or extension;

(C) The date the loan was sent to the collection agency;

(D) The name of the collection agency; and,

(E) The date and amount of monies received from the collection agency.

(F) A separate log of files sent to a collection agency need not be maintained provided the information is available in existing records at the time of examination.

(5) Any public or private sale of repossessed property by a Consumer Finance licensee shall be made in good faith and in a commercially reasonable manner. If there is no recognized market for the property, such as a motor vehicle auction house or similar sales process that is commonly used to sell property of the kind repossessed by the licensee, prior to a private sale of repossessed 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 written bid must contain sufficient information to identify the property being bid on.

(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.

(7) Short-Term Personal Loan licensees who make both Title and Payday loans must maintain separate logs for each type of loan.

Stat. Auth.: ORS 725.320 & ORS 725.505

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; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01

**441-730-0120****Account Record to Be Maintained for Each Loan**

(1) A separate individual account record shall be maintained by the licensee 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:

- (a) The amount, if any, applied to interest;
- (b) The date to which the interest is paid;
- (c) If payment is insufficient to pay interest to date, the dollar amount short;

(d) The amount applied to principal, if any; and

(e) The unpaid principal balance of the loan, if any.

(3) The account record for a precomputed-interest loan may comply with section (2) of this rule or it shall show, for each loan payment received:

(a) The amount of the payment applied to installments, identifying which installments;

(b) The amount applied to any default charges; and

(c) The unpaid balance of the loan and charges, if any.

(4) When a licensee makes advances to perform covenants, the account record shall specify:

(a) The amount of the advance which is added to the principal of the loan.

(b) A brief description of what the advance is paying; and,

(c) When the advance is to purchase insurance coverage, the type and extent of coverage.

(5) The account record for a Short-Term Personal Loan shall show the date each loan is renewed, the amount of the charge the borrower paid and the new due date of the loan.

Stat. Auth.: ORS 725.320 & ORS 725.505

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; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01

#### 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 that office.

Stat. Auth.: ORS 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; FCS 13-2001, f. & cert. ef. 12-27-01

#### 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 to another licensed office in this 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, 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. However, if a bulk sale or similar transfer of loans not in the ordinary course of business is made to another licensed office, the licensee may, with the prior approval of the Director, make other provisions for the retention of copies of records and files and for the examination of accounts in the receiving office.

(4) Whenever an active loan is sent to a collection agency, the licensee shall retain in the originating office the original record or an exact copy of the account record.

(5) Notwithstanding sections (1) through (4) 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 offices;

(c) The Director, and any duly appointed examiners or agents 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 725.320 & 725.505

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; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01

#### 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;

(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;

(c) The direct loan pays off one or more obligations in addition to the retail installment contract;

(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 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; FCS 13-2001, f. & cert. ef. 12-27-01

#### 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 1/30 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.

(3) Short Term Personal Loan lenders must compute daily interest using subsection (2) of this rule.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.340

Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0105; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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 shall be reduced 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.

(3) Short Term Personal Loans which have a single payment payoff feature are not precomputed interest loans.

Stat. Auth.: ORS 725.320 & ORS 725.505

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; FCS 2-2000, f. & cert. ef. 2-15-00

#### 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.

(3) The provisions of this rule do not apply to Short-Term Personal Loans.

Stat. Auth.: ORS 725.505

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; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01

#### **441-730-0200**

##### **Action on Precomputed Loan; Rebate Required**

(1) When a licensee brings an action against a borrower on a precomputed loan, if the action comes to judgment prior to the due date of the final installment, the licensee shall tender a rebate to the borrower 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 the US Actuarial Rule.

(3) Licensees may collect prejudgment interest provided the court awards it, but licensees may not estimate interest based upon an estimate of the judgment date.

Stat. Auth.: ORS 725.320 & ORS 725.505

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 805-075-0130; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 13-2001, f. & cert. ef. 12-27-01

#### **440-730-0205**

##### **Limitation on Charging a Prepayment Penalty by Consumer Finance Licensees**

A Consumer Finance licensee may not charge a prepayment penalty for the prepayment of all or part of the unpaid balance of a loan where:

(1) A loan owned by the licensee is refinanced by the licensee.

(2) The licensee has repossessed any collateral offered for the loan, sold the collateral and applied the proceeds of the sale towards the unpaid balance of the loan.

(3) The licensee forecloses on property and applies any proceeds realized as a result of the foreclosure toward the unpaid balance of the loan.

(4) The licensee exercises an option contained in the loan agreement to require immediate repayment of all or part of the unpaid balance of the loan.

(5) All or part of the loan balance is repaid with insurance benefits resulting from the death of the borrower.

(6) The licensee demands repayment of all or part of the unpaid balance of the loan.

(7) The loan is a Home Equity Line of Credit or an unsecured line of credit.

Stat. Auth.: ORS 725.320 & ORS 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01

#### **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 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 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 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 written 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, including:

(A) Amounts applied to payment of the balance of an existing loan with the licensee;

(B) Amounts paid to others as authorized and designated by the borrower;

(C) Amounts 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) Amounts paid for other identifiable charges the borrower has approved in writing;

(E) Amounts retained for filing, releasing, recording, satisfaction, reconveyance, license, title transfer, and similar fees, itemizing the purpose of each fee; and

(F) Amounts remaining that will be paid to 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, endorser or otherwise.

(3) The statement required by section (1) of this rule may include disclosures under applicable federal law that a licensee is required to make to the borrower at the time the loan is made.

(4) 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 725

Stats. Implemented: ORS 725.330, ORS 725.340 & ORS 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; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01

#### 441-730-0250

##### Receipt to Be Furnished to Borrower Upon Request

(1) When the borrower requests a receipt for a payment on a loan, including a Short-Term Personal Loan, that is contracted for interest to be computed on a daily basis, the receipt shall specify:

- (a) The amount applied to interest, if any;
- (b) The date to which the interest is paid, or the dollar amount short, if payment is insufficient to pay interest to date;
- (c) The amount applied to principal, if any; and
- (d) The unpaid principal of such loan, if any.

(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:

- (a) The amount of the payment applied to the loan and any default charges and
- (b) The amount of the unpaid balance of the loan and charges, if any.

Stat. Auth.: ORS 725.505

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; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01

#### 441-730-0260

##### Advances to Perform Covenants

(1) Within a reasonable time after advancing any sum pursuant to ORS 725.340(3), the licensee shall furnish the borrower a written statement showing:

- (a) The amount of the sums advanced and, any charges with respect to such sums advanced;
- (b) Any revised payment schedule; and, if the duties of the borrower performed by the lender pertain to insurance.
- (c) A brief description of the types of insurance paid for by the licensee.

(2) The amount advanced by the licensee may be added to the unpaid balance of the loan and may bear interest 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 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; FCS 13-2001, f. & cert. ef. 12-27-01

#### 441-730-0270

##### Conditions Applicable to Short-Term Personal Loans

(1) The following conditions apply to all Short-Term Personal Loan licensees making Payday loans.

- (a) Interest shall not be compounded.
- (b) Lenders must calculate daily interest based upon a 365/366 day year pursuant to OAR 441-730-0160(2) and may not calculate daily interest based upon a 360-day year.

(c) Lenders must comply with the Equal Credit Opportunity Act (ECOA), 15 USC 1691, and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. A copy of the notice must be retained in the files. Exceptions to providing notice contained within ECOA are available to the lender under this rule.

(d) The Annual Percentage Rate shall be posted prominently inside the lender's office where customers can easily see it. For lenders who make loans with varying Annual Percentage Rate, the disclosure requirements of this subsection may be satisfied by posting the Annual Percentage Rate for a typical loan and including the terms of the typical loan in the posting.

(e) The loan agreement shall have the following information displayed prominently in bold print on the first page of the agreement:

- (A) The APR;
- (B) The amount of the loan;
- (C) The amount of interest/finance charge if paid when due;
- (D) The total amount due on the due date; and
- (E) The due date. Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. et seq., and Regulation Z 12 C.F.R. Part 2226 will satisfy the requirements of this section.

(f) After any payment made, in full or in part, on any loan, the licensee shall:

- (A) give to the person making such a payment a signed, dated receipt showing the amount paid and the balance due on the loan.
- (B) An electronic receipt, a canceled check, or other written instrument approved by the director may substitute for the receipt requirements of subsection (A).

(g) A Short-Term Personal Loan licensee may not make a payday loan to a applicant without forming a good faith belief that the applicant has the ability to repay the loan. A licensee who meets the provision of section (2) of this rule will be deemed to be in compliance with this section.

(h) If a Short-Term Personal Loan licensee permits a borrower to renew or extend a Payday loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(i) A Short-Term Personal Loan licensee may not renew or extend a Payday loan more than three times. If the borrower is unable to repay the loan after the third renewal or extension, the lender may not assess further charges, but may institute collection efforts to recover the balance of the loan.

**Example:** A borrower borrows \$300 for two weeks on June 5 for a fee of \$45. The due date is June 19. On June 19, being unable to pay-off the loan, the borrower renews or extends the loan for another two weeks by paying the \$45 fee. The new due date is July 3. On July 3, the borrower is unable to pay-off the loan and renews or extends the loan a second time by paying another \$45. The new due date is July 17. On July 17 the borrower is unable to pay off the loan and renews or extends the loan for a third time by paying another \$45 with a due date of July 31. On July 31 the borrower is unable to pay off the balance. The lender may not charge any additional interest fees or other charges, but may institute collection efforts.

(j) A Short-Term Personal Loan licensee may not make a "same day transaction" with a borrower who has renewed or extended the Payday loan three times. The lender must wait until the next business day following receipt of the payoff from the borrower before making a new Payday loan to that borrower.

(k) If a Short-Term Loan licensee permits a borrower to renew or extend a Payday Loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(L) A Short Term Personal Loan licensee making a Payday Loan may not make more than one Payday Loan to an applicant at a time. A licensee who has established a credit limit for a borrower may make an additional loan of money, up to the credit limit, to the borrower if the existing loan was less than the credit limit. The additional loan will be due on the date the original loan was scheduled to be paid-off.

(m) A Short-Term Loan licensee making Payday Loans may not conduct business at a location at which liquor or lottery tickets are sold or where gambling devices are operated.

(n) If a licensee requests or accepts more than one check or bank draft to secure a single Payday Loan and the borrower defaults, the lender may not charge more than one Non-Sufficient Fund charge, but may recover any cost charged by any non-affiliated financial institution for the second or other checks.

(o) Payday Lenders who do not deliver the note marked "Paid or Renewed" to a borrower in compliance with ORS 725.360(4)(d) must state in the loan agreement that the borrower's canceled check will evidence payment of the loan. The lender must mark the note "Paid" or "Renewed" and retain the note in the file. An electronic transmission may fulfill the requirements of this section if the loan is made using an electronic medium and the consumer has consented to use of electronic transmission.

(p) Payday lenders who do not cash the borrower's check must return the note marked "Paid" and may not rely on subsection (o) of section (1) of this rule. The lender must also mark the check "Void" and return it to the borrower with the note marked "Paid".

(q) Payday lenders must provide consumers, at the time application is made, with a written statement, in a form approved by the Director, which clearly describes the results of any default or late payment.

(2) A Short-Term Personal Loan licensee making a Payday loan will be presumed to have complied with the provisions of subsection (g) of section 1 of this rule if the licensee:

(a) Requires the applicant to evidence a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income;

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which compensation is received by the applicant or on which the applicant receives funds;

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor;

(d) Lends no more than 25% of the consumer's monthly net income to an applicant that earns \$60,000 a year or less. This limitation does not apply to loans made to applicants who have a net income in excess of \$60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(e) If the licensee has established a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the licensee may rely on that preexisting relationship to form the good faith belief required under Subsection (g) of Section 1 of this rule.

(f) Solicits information on the number, amount and dates of maturity of existing outstanding loans.

(3) A licensee is not required to perform the due diligence in section (2) of this rule for every transaction, but may rely on prior experience, within 12 months, with repeat customers to take advantage of the presumption of compliance and subsection (g) of section (1) of this rule.

(4) A Payday Loan lender may not use a contract evidencing a Payday Loan that contains any of the following provisions:

(a) A hold harmless clause;

(b) A confession of judgment or other waiver of the right to notice and opportunity to be heard in the event of suit or process.

(c) A provision in which the borrower agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course.

(d) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the borrower, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725.320 & 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-730-0275**

#### **Conditions Applicable to Short-Term Personal Loans that are Title Loans**

(1) Short Term Personal Loan Licensees making Title Loans shall not compound interest.

(2) Short Term Personal Loan Licensees making Title Loans must calculate daily interest based upon a 365/366 day year pursuant to OAR 441-730-0160(2) and may not calculate daily interest based upon a 360-day year.

(3) Short Term Personal Loan Licensees making Title Loans must comply with the Equal Credit Opportunity Act (ECOA), 15 USC 1691, and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. The lender must retain a copy of the notice in the lender's files. Exceptions to providing notice contained within ECOA are available to the lender under this rule.

(4) The Annual Percentage Rate shall be posted prominently inside the Short Term Personal Loan licensee's office where customers can easily see it. For Short Term Loan licensees who make Title Loans with varying Annual Percentage Rates, the disclosure requirements of this subsection may be satisfied by posting the Annual Percentage Rate for a typical loan and including the terms of the typical loan in the posting.

(5) The Short Term Personal Loan licensee making Title Loans shall have the following information displayed prominently in bold print on the first page of the Title Loan agreement:

(a) The Annual Percentage Rate;

(b) The amount of the loan;

(c) The amount of interest/finance charge if paid when due;

(d) The total amount due on the due date; and

(e) The due date.

(f) Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. et seq. and Regulation Z 12 C.F.R. Part 226 will satisfy the requirements of this section.

(6) After any payment made, in full or in part, on any loan, the licensee shall:

(a) Give to the person making such a payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(b) An electronic receipt, a canceled check, or other written instrument approved by the director may substitute for the receipt requirements of subsection (a).

(7) If a Short Term Loan licensee permits a borrower to renew or extend a Title Loan after the due date, the extension or renewal shall be effective on the due date of the loan and no late charge shall be permitted.

(8) The Short Term Personal Loan licensee may not use title loan contracts that provide for the continuation of interest or other charges after repossession.

(9) Before repossessing a vehicle the Short Term Personal Loan licensee shall send written notice of default in a form approved by the Director, by first class mail to the borrower at the address shown on the loan agreement, or last known address 10 days prior to repossession.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower file; and

(c) Repossession may not occur until the 11th day from the date of the notice.

(10) The Short Term Personal Loan licensee must give written notice in a form approved by the Director, to the borrower delivered by first class mail to the address shown on the loan agreement, or the last known address, of intent to sell a repossessed vehicle.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower file; and

(c) The sale may not occur until at least the 16th day from the date of the notice.

(11) The Short Term Personal Loan licensee must obtain at least three bids on a vehicle prior to sale unless the sale is conducted at a public or dealer auction conducted by a licensed auctioneer. The bids



must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.

(12) The Short Term Personal Loan licensee may not sell a vehicle to an affiliate, subsidiary or employee of the licensee.

(13) If a vehicle is sold, the Short Term Personal Loan licensee shall deliver to the borrower all proceeds, exceeding the debt and reasonable costs associated with the repossession and sale. Delivery must be made not later than three business days after the licensee receives the proceeds of the sale. If the vehicle was paid for by a check, the licensee may deliver the proceeds within three days after the check has cleared.

(14) If a Short Term Personal Loan licensee stores repossessed vehicles on property owned, leased, or otherwise controlled by the licensee, the licensee may not charge any storage charge regardless of how long the car is held prior to sale.

(15) A Short Term Personal Loan licensee may not assess the borrower any charge for repossession or sale except for the actual costs associated with the repossession or sale, but may recover:

(a) Reasonable pass-through costs paid to non-affiliated third parties excluding any storage charge resulting from repossession.

(b) Storage Charges unrelated to repossession such as impound charges by a local municipality.

(c) With approval by the Director, storage charges incurred resulting from remoteness from auction sales.

(16) A Short Term Personal Loan licensee may not repossess a vehicle if the title is held by more than one person, unless the licensee has all persons sign the loan documents.

(17) At the time the Truth In Lending disclosure, required pursuant to 15 U.S.C. et seq., and Regulation Z 12 C.F.R. Part 226, is provided to the borrower by the Short Term Personal Loan licensee, the Short Term Personal Loan licensee must provide:

(a) A statement that clearly describes under what circumstances a vehicle may be repossessed and sold;

(b) A statement that informs the borrower that if a car is sold, the borrower may not receive any proceeds from the sale because of the costs incurred; and

(c) The borrower may be liable to pay additional funds if the proceeds do not equal at least the amount of the debt plus the cost of repossession and sale.

(18) In compliance with ORS 725.605, prior to making a loan, a Short-Term Personal Loan licensee making a Title Loan must form a good faith belief that the applicant has the ability to repay the Title Loan under consideration.

(19) A Short-Term Personal Loan licensee making a Title Loan will be presumed to have complied with section 18 of this rule if the licensee:

(a) Requires the applicant to evidence a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income.

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which compensation is received by the applicant or on which the applicant receives funds

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor.

(d) Lends no more than 25% of the applicant's monthly net income to an applicant that earns \$60,000 a year or less. This limitation does not apply to applicants with an income in excess of \$60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(20) If the licensee has established a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the licensee may rely on that preexisting relationship to form the good faith belief required under section (18) of this rule.

Stat. Auth.: ORS 725.505, 725.625

Stats. Implemented: ORS 725.505, 725.605, 725.615

Hist.: FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-730-0280**

##### **Prohibited Provisions in Loan Contract Provisions**

A Consumer Finance or Payday licensee may not use a contract evidencing a loan that contains any of the following provisions:

(1) A hold harmless clause;

(2) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in the event of suit or process;

(3) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course.

(4) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.360

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 4-2001, f. & cert. ef. 3-27-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01

#### **441-730-0310**

##### **Refund of Unearned Interest and Charges and Prohibition on Prepayment Penalty**

(1) If a borrower pays off a Short-Term Personal Loan that is a Payday or Title Loan prior to the due date, the licensee must refund all unearned interest and charges and may not charge a Prepayment Penalty except as provided in section (2) of this rule.

(2) A Short-Term Personal Loan licensee who has made a Payday or Title loan may increase the earned interest and charges to a maximum of 10% of the loan amount if the earned interest and charges at the time of loan pay-off is less than that amount.

(3) For purposes of this rule, the Short-Term Personal Loan licensee who has made a Payday or Title loan shall calculate earned interest and charges by dividing the total interest and charges by the number of days of the original loan and multiply that quotient by the number of days from the date the loan was made to the date of pay-off counting the day after the loan was made as the first day.

**Example:** A borrower borrows \$300 on the 5th day of the month for two weeks and pays a \$45.00 charge or interest. The borrower does not pay the loan off on the due date but pays the loan off on the 8th day of the month. The earned interest and charge is calculated as follows:

The total cost of the loan of \$45.00 ÷ the original loan period of 14 days X the number of days between the date the loan was made and the date the loan was paid off, or 3 \$45.00/14 = 3.21 X 3 = \$9.63 Earned Interest. In this example the borrower should payback \$300 plus 10% of \$300 or \$30.00.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.340 & ORS 725.360

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01

#### **441-730-0320**

##### **Report of Licensee**

Licensees are required to file their annual reports by June 30 of each year. The report shall cover operations for the period of the previous calendar year.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.190

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01

## **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 726

Stats. Implemented: ORS 726.010 & ORS 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 2002 and thereafter, the annual fees paid pursuant to ORS 726.125(1) and (2) shall be \$350.

(2) Whenever the Director provides extra services to a pawnbroker under ORS 726.125(3) or conducts an examination of a licensed pawnbroker under ORS 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) & ORS 726.250

Stats. Implemented: ORS 726.125 & ORS 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; FCS 11-2000, f. 10-5-00, cert. ef. 9-1-01; FCS 8-2001, f. & cert. ef. 8-1-01; FCS 4-2002, f. & cert. ef. 10-25-02

#### 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 726

Stats. Implemented: ORS 726.380

Hist.: FID 2-1985, f. & ef. 7-22-85; Renumbered from 805-076-0300

#### 441-740-0030

##### Records and Information to be Submitted to Director

At least once during any calendar year in which an examination is not conducted under ORS 726.250(2) at the licensed location of the pawnbroker, the pawnbroker shall submit to the director no later than the deadline specified by the director:

(1) A signed and dated response to questions concerning:

(a) Changes in the business ownership, location and operations since the last examination;

(b) Current business hours;

(c) Changes in rate of interest or fees charged since the last examination;

(d) Reports of loan activity to the local police agency;

(e) Identity of all managers and all bookkeepers currently employed;

(f) Changes in the pawnbroker surety bond since the last examination;

(g) Total number and dollar amount, between the last examination and a specific date selected by the director, of new loans made, forfeitures, and police pickups; and

(h) Number and dollar amount of open loans as of the specific date selected by the director.

(2) Copies of documents, for a specific date selected by the director, showing:

(a) All new pawns made;

(b) All pawns redeemed or renewed; and

(c) All forfeiture letters mailed to a consumer for a pawn of \$500 or more, or if none, the most recent forfeiture letter on a pawn of \$500 or more.

(3) A copy of the declarations page of an insurance policy or policies showing current fire, theft and burglary coverage.

(4) Any additional documents or responses requested by the director after examination of the materials submitted under sections (1) through (3) of this rule.

Stat. Auth.: ORS 726.250

Stats. Implemented: ORS 726.250

Hist.: FCS 8-2003, f. 12-30-03, cert. ef. 1-1-04

## DIVISION 745

### MONEY TRANSMITTER PROGRAM

#### General Provisions

#### 441-745-0000

##### Definitions

(1) Unless a specific definition is provided or the context otherwise requires, the words and phrases used in OAR chapter 441, division 745 have the meaning given them in ORS 183.310.

(2) A “Director” means the Director of the Department of Consumer and Business Services and the Director’s authorized representatives.

(3) A “Department” means the Department of Consumer and Business Services.

(4) A “Person” includes individuals, partnerships, corporations, associations, firms, and joint stock companies.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.200

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

#### 441-745-0010

##### 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 Chapter 717.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

#### Licensing of Money Transmitters

#### 441-745-0300

##### Application Procedure

Each person desiring to obtain a money transmitters license shall apply to the Director by submitting all information required pursuant to ORS 717.220 plus a list of permissible investments pursuant to ORS 717.215(3), if required.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.215 & ORS 717.220

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

**441-745-0310**

**Renewal of License**

A licensee may renew their license to conduct the business of a Money Transmitter by submitting:

- (1) A completed renewal application.
- (2) A renewal fee of \$500.00 pursuant to ORS 717.240(1).
- (3) The information required pursuant to ORS 717.240(2).

Stat. Auth.: ORS 717.240 & ORS 717.310

Stats. Implemented: ORS 717.240

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

**441-745-0330**

**Security Device**

Persons who were originally licensed as Sale of Checks licensees who renew their license under the provision of ORS 717.245 and who currently have on file a security device may continue the use of the security device provided:

- (1) The security device is in an amount sufficient to meet the requirements of ORS 717.225; or
- (2) The security device has been amended, by filing a rider or otherwise, to increase the amount of the security device to an amount required by ORS 717.225 and to reference ORS 717.225.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.225

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

**441-745-0340**

**Fees, Charges Money Transmitters Pay the Director**

- (1) The rate of charge payable by a licensee is \$60 an hour per person payable by the licensee for the Director and each examiner or other division employee used in an examination conducted under ORS 717.255 and for extra services provided a license under ORS 717.255(2).
- (2) Notwithstanding the rate of charge fixed by section (1) of this rule:

(a) If an examiner or other division employee 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;

(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.

- (3) As used in this rule;

(a) "Extra services" means any attention other than an annual examination given under ORS 717.255(1).

(b) 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.

Stat. Auth.: ORS 717.310

Stats. Implemented: ORS 717.255

Hist.: FCS 8-2000, f. & cert. ef. 6-27-00

**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 284

Stats. Implemented: ORS 708.078, ORS 708.430 & ORS 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 284

Stats. Implemented: ORS 708.078, ORS 708.430 & ORS 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 284

Stats. Implemented: ORS 708.078, ORS 708.430 & ORS 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 284

Stats. Implemented: ORS 708.078, ORS 708.430 & ORS 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 284

Stats. Implemented: ORS 708.078, ORS 708.430 & ORS 716.588

Hist.: FCS 1-1988, f. 1-26-88, cert. ef. 3-1-88; Renumbered from 805-080-0020

### **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**

#### **441-760-0020**

##### **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 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 transactions 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 722

Stats. Implemented: ORS 722.108, ORS 722.342 & ORS 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 722

Stats. Implemented: ORS 722.108 & ORS 722.342

Hist.: FID 3-1985, f. & ef. 8-22-85; Renumbered from 805-100-0020

#### **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 705, ORS 706, ORS 722, ORS 723 & ORS 725

Stats. Implemented: ORS 705.620, ORS 722.606 & ORS 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 722

Stats. Implemented: ORS 183.337 & 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 815-020-0100; 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 722

Stats. Implemented: ORS 183.337 & ORS 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 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 USC 1464(a) (para. 3001)** relating to chartering and purpose.

(2) **12 USC 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 USC 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 USC 1464(k) (para. 3032)** relating to acting as fiscal agent.

(5) **12 USC 1464(l) (para. 3033)** relating to acting as trustee of trust respecting stock bonus, pension or profit-sharing plans.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 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 USC 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: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 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: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 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: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 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: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 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 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: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 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 USC 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 722

Stats. Implemented: ORS 722.154, ORS 722.156, ORS 722.306 & ORS 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 USC 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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 USC 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 722

Stats. Implemented: ORS 722.308 & ORS 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 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 722

Stats. Implemented: ORS 458.415, ORS 696.254 & ORS 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 ORS 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 722

Stats. Implemented: ORS 183.310(8) & ORS 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 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 441-760-0130(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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 722

Stats. Implemented: ORS 722.308, ORS 722.309 & ORS 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 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 722

Stats. Implemented: ORS 722.448 & ORS 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

## DIVISION 780

### ELECTRONIC SIGNATURES ACT

#### 441-780-0010

##### Definitions

(1) "Authentication Authority" means a person defined in ORS 192.835(1) and includes Certification Authorities ("CA").

(2) "Certificate of Registration" means the Order issued by the director to an authentication authority that has submitted a complete and satisfactory application to be registered with the director. The Certificate of Registration does not mean that the director has verified the information submitted by the authentication authority nor does the Certificate of Registration mean that the director passed upon the merits of the conduct of business by the authentication authority.

(3) "Certificate Policy" is a named set of rules that indicates the applicability of a certificate to a particular community and/or class of application with common security requirements.

(4) "Certification Practice Statement" ("CPS") is a published declaration by a Certification Authority which forms the basis of a contractual arrangement between the subscriber and the CA and provides the subscribers and relying parties notice of the CA's key pair issuance and verification methods and includes those items set out in OAR 441-780-0080.

(5) "DFCS home page" means the Internet home page established by the Division of Finance and Corporate Securities found at [www.cbs.state.or.us/external/dfcs](http://www.cbs.state.or.us/external/dfcs).

(6) "Director" means the Director of the Department of Consumer and Business Services.

(7) "Independently audited" means a compliance examination performed by a certified public accountant in accordance with Statement on Standards for Attestation Engagements No. 3, in which the certified public accountant issues a positive unqualified opinion ("Compliance Examination"). The Compliance Examination shall ensure the following:

(a) The CA has effective controls to provide reasonable assurance that:

(A) Documents or transactions received electronically are the same documents or transactions transmitted electronically and that they have not undergone any alteration or change; and

(B) The transformation of electronic data is created using a private key that corresponds to the signer's public key.

(b) The CA has complied with all of the applicable requirements and provisions of its CPS.

(8) "Material litigation" includes any past or present pending litigation which has a substantial likelihood of being considered important by an ordinary person in conducting business with a CA or by the Director in determining whether to deny, suspend or revoke the registration of a person as an Authentication Authority.

(9) "Relying Party" includes any person who relies upon the integrity of the certificate issued by a CA to ensure that the document or transaction received electronically is the document or transaction transmitted electronically and has not undergone any alteration or change.

(10) "Subscriber" means a person who has received certificate or related digital signature services from a CA.

(11) "Web link" means the links on the Authentication Authority's and DFCS home page which allows a user to connect to the Web Pages of registered Authentication Authorities from the DFCS home page and to the DFCS home page from the Authentication Authority's home page.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0020

##### Application Procedures

(1) Applications may be submitted electronically or in hard copy. Electronic submissions should be sent to [dig.sig.app@state.or.us](mailto:dig.sig.app@state.or.us).

(2) Each person desiring to obtain a registration as an Authentication Authority shall apply to the Director by submitting the following:

(a) An application on a form approved by the Director and posted on the DFCS home page;

(b) A Compliance Examination with a report date within 90 days of the application date;

(c) A copy of their Certificate Policy or CPS as defined in OAR 441-780-0010 and containing at a minimum those items identified in OAR 441-780-0080;

(d) A one-time nonrefundable application fee in the amount of \$500.

(3) In addition to the information required in subsection 2 of this section, an applicant shall establish a Web Link to the DFCS home page.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0030

##### Registration

(1) When the Director notifies the applicant that registration is pending, the applicant shall pay a nonrefundable initial registration fee in the amount of \$500 to the Director.

(2) Upon receipt of the nonrefundable initial registration fee, the Director shall register the Authentication Authority, issue a certificate of registration, post notice on the DFCS home page, and establish a link to the home page of the registrant.

(3) The initial registration issued by the Director shall expire on June 30th following the initial issue.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0040

##### Renewal of Registration

(1) Applications may be submitted electronically or in hard copy. Electronic submissions should be sent to [dig.sig.app@state.or.us](mailto:dig.sig.app@state.or.us).

(2) Renewal registrations shall be issued for a two-year period and shall expire on June 30th of the second year of the renewal period.

(3) 60 days prior to expiration of registration, the Director shall provide notice of pending registration expiration to all registrants.

(4) Registrants shall file an application for renewal on a form approved by the Director and posted on the DFCS home page.

(5) At the time of filing the application for renewal, each registrant shall provide a copy of the most recent Compliance Examination and a nonrefundable renewal fee in the amount of \$500.

(6) The Director shall evidence the renewal by issuing a certificate of registration renewal and posting the notice of renewal on the DFCS home page.

(7) The Director shall evidence the failure of an Authentication Authority to renew by issuing a notice of failure to renew and posting notice of the failure to renew on the DFCS home page.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0050

##### Amendments Material Changes

(1) An applicant or registrant shall notify the director of any proposed material change to the CPS prior to making the change. A change to any item listed in OAR 441-780-0080 shall be deemed material. The director shall approve any material change to the CPS prior to the change being effective.

(2) An applicant or registrant shall be responsible for making any necessary change to its application or registration as it appears on the DFCS home page within five days of the change being effective.

(3) No fee is required in connection with filing proposed changes under subsection (1) of this rule or amending an application or making a change in an existing registration under subsection (2) of this rule.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0060

##### Reciprocity

(1) Authentication Authorities, which are licensed, registered or otherwise under the statutory oversight of the United States, a foreign country or by a state, province, or political subdivision or agency of the United States or foreign country ("governmental unit") will be registered as an Authentication Authority in Oregon provided:

(a) The oversight of the governmental unit is equal to or greater than the oversight required under ORS 192.825 to 192.855 and OAR 441-780-0010 to 441-780-0090;

(b) The applicant submits to the Director a written request for registration and a copy of the license or registration issued by the governmental unit; and

(c) The applicant pays the nonrefundable fees described in OAR 441-780-0020(2)(d) and 441-780-0030(1).

(2) Persons registered pursuant to the provisions of this section are exempt from the filing requirements of OAR 441-780-0020(2)(a), (b) and (c) and OAR 441-780-0030(2).

(3) If the information listed in Subsection 1 of this section is satisfactory to the Director, the Director shall:

(a) Confirm the license or registration status of the applicant with the statutory authority named on the license or registration submitted by the Authentication Authority;

(b) register the Authentication Authority, issue a certificate of registration, post notice on the DFCS home page, and establish a link to the home page of the registrant.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0070

##### Grounds for Denial, Suspension, or Revocation of Registration

The Director may by order deny, suspend or revoke the Registration of an Authentication Authority pursuant to the Administrative Procedures Act ORS Chapter 183 if the director finds that the applicant or registrant:

(1) Is insolvent, either in the sense that the liabilities of the applicant or registrant exceed the assets of the applicant or registrant or that the applicant or registrant cannot meet the obligations of the applicant or registrant as they mature, or is in such financial condition that the applicant or registrant cannot continue in business with safety to the customers of the applicant or registrant;

(2) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession or has engaged in unfair or unethical practices or conduct in connection with the business of an Authentication Authority;

(3) Has willfully or repeatedly violated or failed to comply with any provision or ORS 192.825 to 192.855 or any rule or order of the Director or failed to permit review of its operations by the Director;

(4) Has been convicted of a misdemeanor, an essential element of which is fraud, or of a felony;

(5) Has filed an initial or renewal application for a registration as an Authentication Authority which as of the date the registration was issued or renewed, as of the date of an order denying, suspending or revoking a registration, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(6) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business of an Authentication Authority;

(7) Has failed to comply with the requirement to file a Compliance Examination;

(8) Has failed to comply with the provisions of the CPS filed with the Director;

(9) Has failed to maintain in a timely manner on the registrant's home page a current Certificate Registration List of all digital certificates which have been revoked or canceled by the registrant;

(10) Has failed to maintain the registrant's home page link to the Department.

Stat. Auth.: ORS 192.845

Stats. Implemented: ORS 192.830 - ORS 192.845

Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0080

##### Certification Practice Statement

The CPS submitted with an application for registration shall, at a minimum:

(1) Identify all certificate policies to which it purports to conform;

(2) State the appropriate level of reliance for each class of certificate offered;

(3) Discuss key management methodology including the life-cycle of issued certificates, where public keys can be located, and the identity of the algorithms used by the Authentication Authority;

(4) Outline physical, personnel and procedural controls which have been implemented by the Authentication Authority to ensure reliability and integrity of the system;

(5) Describe operational practices including, but not limited to:

(a) Registration of unique names;

(b) Factors leading to a suspension or revocation of a certificate;

(c) Updating of certificates;

(d) Procedures for maintaining a current, accurate Certificate Registration List in compliance with OAR 441-780-0070(9);



- (e) Disaster recovery provisions and how the system will deal with any failure;
  - (f) Provisions for private key recovery, if available;
  - (g) Policy on disclosure of private information.
  - (6) Contain a clear statement of the terms of service and any limitation of warranties;
  - (7) A statement of the duties required of the Authentication Authority, the Subscriber, and any vendor or retailer who sells digital signatures on behalf of the Authentication Authority.
- Stat. Auth.: ORS 192.845  
Stats. Implemented: ORS 192.830 - ORS 192.845  
Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

#### 441-780-0090

##### DCBS Home Page

The Director shall create and maintain a home page which shall include the following features:

- (1) Links to or the text of ORS 192.825 through 192.855 (the Electronic Signature Act) and these administrative rules;
- (2) All forms required for application for registration of Authentication Authorities;
- (3) Links to the home page of all registered Authentication Authorities;
- (4) A statement explaining the intent of the Electronic Signature Act, the effect of registration and nonregistration of Authentication Authorities;
- (5) A list of all registered Authentication Authorities which must be updated within one working day of any material change known to the Director and which clearly describes the status of the registration as active, pending, suspended, revoked, canceled or withdrawn;
- (6) A statement that the length of time a suspended, revoked, canceled or withdrawn registration will be posted on the home page will be 24 months from the date the registration was denied, revoked, canceled or withdrawn and during the period of any suspension of a registration.

Stat. Auth.: ORS 192.845  
Stats. Implemented: ORS 192.830 - ORS 192.845  
Hist.: FCS 5-1998, f. 11-12-98, cert. ef. 11-16-98

## 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) "Director" means the director of the Department of Consumer and Business Services.
- (2) "Employed" means working for a salary or wages.
- (3) "Person" means any legal entity, including individuals, corporations, associations, firms and partnerships.
- (4) "Repossessor" means a person who takes possession of an item when the installment payment has been defaulted and the creditor has the right to repossess.
- (5) "Solicitor" means a person who attempts to obtain clients for a collection agency or payments due a client of a collection agency.
- (6) "Trust Account" means a financial institution 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.

Stat. Auth.: ORS 697  
Stats. Implemented: ORS 697.085  
Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0001; FCS 4-2000, f. & cert. ef. 3-9-00

### Registration

#### 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 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 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

(1) Application for registration shall be on forms provided by the Division of Finance and Corporate Securities 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; and
- (e) Address of all business locations.

Stat. Auth.: ORS 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; FCS 4-2000, f. & cert. ef. 3-9-00

#### 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 Director in writing of the changes.

Stat. Auth.: ORS 697.085  
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; FCS 4-2000, f. & cert. ef. 3-9-00

#### 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 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 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 permanently closes an office, it shall notify the Director, in writing, within five days from closure and provide the following information:

(1) Disposition or location of records and clients' moneys.

(2) Name and address of a contact person for future inquiries.

Stat. Auth.: ORS 697.085

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; FCS 4-2000, f. & cert. ef. 3-9-00

**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 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 Director within ten working days of the request for records.

Stat. Auth.: ORS 697.085

Stats. Implemented: ORS 697.632

Hist.: DC 3-1984, f. & ef. 1-16-84; Renumbered from 814-101-0055; FCS 4-2000, f. & cert. ef. 3-9-00

**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 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 Director 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 697.085

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; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0130****Response to Claims**

(1) A copy of a claim received by the Director shall be sent to the collection agency.

(2) The collection agency is required to respond in writing to the Director within 15 working days.

Stat. Auth.: ORS 697.085

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; FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0140****Civil Penalties**

Civil penalties shall be \$400 for the first offense and \$1,000 for each subsequent offense.

Stat. Auth.: ORS 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, \$120;

(3) Duplicate registration, \$10;

(4) Certification of registration, \$5.

Stat. Auth.: ORS 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; FCS 9-2000, f. & cert. ef. 9-13-00

**441-810-0160****Office and Trust Account Location**

(1) The provisions of ORS 697.058(1), (2), (4), and (5) requiring that a registrant maintain an office location and client trust account in this state are waived provided the registrant submits a written request for waiver; and,

(a) Has been registered by the State of Oregon for the two years immediately preceding the request; or

(b) Has been subject to regulation of the registrant's collection agency activities by another state with laws substantially similar to Oregon's Collection Agency Act for at least five years immediately preceding the request.

(2) Persons who do not qualify for a waiver pursuant to subsection 1 of this section may qualify for a waiver provided they:

(a) Submit a written request for waiver;

(b) Agree to pay the cost of out of state audits; and

(c) Submit an additional \$5,000 bond, which is in addition to the bonding requirements of ORS 697.031(2)(a).

Stat. Auth.: ORS 697.058(9)

Stats. Implemented: ORS 697.058(5)

Hist.: FCS 4-2000, f. & cert. ef. 3-9-00

**441-810-0200****Applicability of Rules, Definition**

(1) OAR 441-810-0200 to 441-810-0250 apply to the practices of a collection agency that enters into an agreement with an obligee to collect child support payments as provided in ORS 25.020.

(2) For the purposes of OAR 441-810-0200 to 441-810-0250, the term "debtor" includes the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

**441-810-0210****Acquisition of Location Information**

Any collection agency communicating with any person other than the debtor for the purpose of acquiring location information about the debtor shall:

(1) Identify himself, state that he is confirming or correcting location information concerning the debtor, and, only if expressly requested, identify his employer;

(2) Not state that such debtor owes any debt;

(3) Not communicate with any such person more than once unless requested to do so by such person or unless the collection agency reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) Not communicate by post card;

(5) Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the collection agency is in the debt collection business or that the communication relates to the collection of a debt; and

(6) After the collection agency knows the debtor is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the collection agency.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-810-0220

##### Communication In Connection With Debt Collection

(1) Without the prior consent of the debtor given directly to the collection agency or the express permission of a court of competent jurisdiction, a collection agency may not communicate with a debtor in connection with the collection of any debt:

(a) At any unusual time or place or a time or place known or which should be known to be inconvenient to the debtor. In the absence of knowledge of circumstances to the contrary, a collection agency shall assume that the convenient time for communicating with a debtor is after 8 a.m. and before 9 p.m., local time at the debtor's location;

(b) If the collection agency knows the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the collection agency or unless the attorney consents to direct communication with the debtor; or

(c) At the debtor's place of employment if the collection agency knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication.

(2) Except as provided in OAR 441-810-0210, without the prior consent of the debtor given directly to the collection agency, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a collection agency may not communicate, in connection with the collection of any debt, with any person other than the debtor, his attorney, a consumer reporting agency if otherwise permitted by law, the obligee, the attorney of the obligee, or the attorney of the collection agency.

(3) If a debtor notifies a collection agency in writing that the debtor refuses to pay a debt or that the debtor wishes the collection agency to cease further communication with the debtor, the collection agency shall not communicate further with the debtor with respect to such debt, except:

(a) To advise the debtor that the collection agency's further efforts are being terminated;

(b) To notify the debtor that the collection agency or obligee may invoke specified remedies which are ordinarily invoked by such collection agency or obligee; or

(c) Where applicable, to notify the debtor that the collection agency or obligee intends to invoke a specified remedy.

If such notice from the debtor under this section (3) is made by mail, notification shall be complete upon receipt.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-810-0230

##### Harassment or Abuse

A collection agency may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of debtors who allegedly refuse to pay debts, except to a consumer reporting agency.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in OAR 441-810-0210, the placement of telephone calls without meaningful disclosure of the caller's identity.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-810-0240

##### False or Misleading Representations

A collection agency may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The false representation or implication that the collection agency is vouched for, bonded by, or affiliated with the United States or any state, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of:

(a) The character, amount, or legal status of any debt; or

(b) Any services rendered or compensation which may be lawfully received by any collection agency for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the collection agency or obligee intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the debtor to:

(a) Lose any claim or defense to payment of the debt; or

(b) Become subject to any practice prohibited by OAR 441-810-0200 to 441-810-0250.

(7) The false representation or implication that the debtor committed any crime or other conduct in order to disgrace the debtor.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a debtor.

(11) The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the collection agency is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in



subsequent communications that the communication is from a collection agency, except that this section shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the collection agency's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the debtor.

(16) The false representation or implication that a collection agency operates or is employed by a consumer reporting agency.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-810-0250

##### Unfair Practices

A collection agency may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this rule:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a collection agency from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the collection agency's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a collection agency of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(a) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(b) There is no present intention to take possession of the property; or

(c) The property is exempt by law from such dispossession or disablement.

(7) Communicating with a debtor regarding a debt by post card.

(8) Using any language or symbol, other than the collection agency's address, on any envelope when communicating with a debtor by use of the mails or by telegram, except that a collection agency may use his business name if such name does not indicate that he is in the debt collection business.

Stat. Auth.: ORS 697.085, Ch. 421, Sec. 4, 2003 OL

Stats. Implemented: ORS 25.020, Ch. 421, Sec. 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-810-0260

##### Compliance with Fair Debt Collection Practices Act

A collection agency that is subject to and in compliance with the requirements of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. 1692 et seq.) shall also be considered to be in compliance with the requirements of OAR 441-810-0200 through 441-810-0250.

Stat. Auth.: ORS 697.085

Stats. Implemented: ORS 25.020, 697.085, Ch 421 Sec 4, 2003 OL

Hist.: FCS 6-2003, f. 12-30-03 cert. ef. 1-1-04

## 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;

(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; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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) & ORS 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:

(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 ORS 646.396.

(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.: ORS 646.396

Stats. Implemented: ORS 646.396(1)

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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.: ORS 646.396

Stats. Implemented: ORS 646.388(4)

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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.: ORS 646.396

Stats. Implemented: ORS 646.386(2)

Hist.: FCS 1-1994, f. & cert. ef. 1-4-94; FCS 2-2004, f. & cert. ef. 8-5-04

### 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

#### 441-850-0035

##### 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

### DIVISION 860

#### MORTGAGE LENDER

##### 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(5)(a) and 59.840(7)(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 and the employee may not act in any capacity as an employee or independent contractor for another licensee.

(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.

(8) A person is not "engaged in the business of making loans secured by an interest in real estate" as used in ORS 59.840(5)(b)(C)

and (7)(b)(F) if the person does not make more than 10 loans secured by an interest in residential real estate in any twelve month period.

(9) "False, misleading or deceptive statements or representation" in regards to advertising are defined to include:

(a) Advertising "wholesale rates" to the public or using the phrase "wholesale rates" in an advertisement;

(b) Advertising a rate which is bought down from the lender over the life of the loan without disclosing in the ad that rate is bought down and the cost of the buy down, to the consumer; and

(c) Advertising any program which would be in violation of Regulation X, 24 CFR 3500.14, regarding kickbacks and unearned fees, including soliciting referrals with a promise to pay the advertising costs of any settlement provider.

(d) For purpose of this subsection, "advertising" and "advertisement" are defined as any distribution of information regarding loan products by the mortgage banker or mortgage broker to members of the public.

(10) The term "Certified Authority" is defined as an organization certified by the Director to approve or provide, or both, loan originator's entry level and continuing education and tests.

(11) The term "Provider" is defined as a person who has been approved by the Certified Authority to provide entry-level or continuing education and tests, or both, to a loan originator.

(12) The term "Notification Date" is defined as the date that begins the two year period within which continuing education must be satisfied. The notification date for each loan originator begins upon the Director's receipt of the first initial, renewal, or amended mortgage banker/broker licensee application which lists the loan originator's name. For an existing licensee, the notification to the Director of a person functioning as a loan originator is considered an amended application and establishes the notification date for that loan originator.

Stat. Auth.: ORS 59.900(1)

Stats. Implemented: ORS 59.845, 59.977

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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 prepared 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. In the event the applicant does not receive client funds except at the time of closing, an Affidavit and Undertaking in the form and on terms approved by the Director;

(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 10 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.

(d) Each branch supervisor shall submit an employment history for the ten years prior to the date of the application, or the date of employment as a supervisor. The employment history 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 441-880-0030 for loan originators.

(9) The information required pursuant to OAR 441-860-0030 for each branch office.

(10) An initial application fee in the amount of \$500 plus a fee of \$100 for each initial branch office operated by a licensee, plus a fee of \$150 for each branch office added after the mortgage banker or mortgage broker license is issued:

(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.

(11) If an applicant for a license submits an application which is incomplete in any respect, the Director will contact the applicant to request the missing information. The applicant will have 30 days to respond to the request for information from the Director. If the applicant fails to respond, the application will be withdrawn.

Stat. Auth.: ORS 59.850(1), ORS 59.855(1) & ORS 59.900

Stats.: Implemented: ORS 59.845 & 59.969

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; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04

#### 441-860-0025

##### Use of Assumed Business Names

(1) In the event a licensee wishes to use an assumed business name in conjunction with the mortgage banker or mortgage broker business, the following steps shall be completed before use of the assumed business name:



(a) The licensee must register the assumed business names used in conjunction with their principal place of business and any branch office with the Secretary of State;

(b) The assumed business name must be added to the surety bond of the licensee. Alternatively, the licensee may purchase a separate bond for the assumed business name, but the separate bond must also contain the name of the principal licensee;

(c) Any bond must be in force as of the date of the addition of the assumed business name, and must be forwarded to the Division within two weeks from the addition of the assumed business name; and

(d) The assumed business name must be placed upon any client trust account maintained by the licensee.

(2) In the event the assumed business name is sold or otherwise transferred to another licensee, the original registrant must surrender their ownership or interest in the assumed business name in all counties in Oregon before it may be utilized by a different licensee.

(3) Regardless of the lack of any ownership interest in the assumed business name, the principal licensee is responsible for all actions of those acting under the assumed business name which relate to mortgage banking loans or mortgage loans.

Stat. Auth.: ORS 59.850 & ORS 59.900

Stats. Implemented: ORS 59.850

Hist.: FCS 4-1999, f. & cert. ef. 12-23-99

#### **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(10) and provide the following information on the original license application form or upon an amendment to the original application at least 30 days before the branch commences operation:

(1) The address of the location of each branch office, and the mailing address if different, and the branch office telephone number email address and facsimile number.

(2) The information required pursuant to OAR 441-860-0020(7) regarding the branch supervisor who will supervise the activities of the employees of the branch to insure compliance with all applicable rules and regulations.

(3) Upon satisfaction of the requirements listed above in (1) and (2), a separate branch office license will be issued by the Director for posting in the branch office location.

Stat. Auth.: ORS 59.850(1) & ORS 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 4-1999, f. & cert. ef. 12-23-99

#### **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) Financial statements on a compiled basis, consisting of a balance sheet and a statement of income or operations, prepared in accordance with generally accepted accounting principles, which is dated not more than six months prior to submission of the application. 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 the application must also be submitted.

(3) A license 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.

(4) 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.

(5) The information required pursuant to OAR 441-880-0030 for loan originators.

(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 \$20.84 for each month of renewal for the principal office plus \$4.16 for each month of renewal for each branch office.

(7) If a licensee submits an application which is incomplete in any respect, the Director will contact the licensee to request the required information. The licensee shall have 10 days to respond to the request for additional information. If the licensee fails to respond to the request, the renewal application will not be processed, and the license shall be canceled on the expiration date.

(8) If a licensee's license is canceled pursuant to section (7) of this rule, and the licensee remedies the incomplete application before the scheduled license expiration date, the license will be renewed for a two-year period.

Stat. Auth.: ORS 59.850(7), ORS 59.855(2) & ORS 59.900

Stats. Implemented: ORS 59.855 & 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04

#### **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 59.980. 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; and

(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.

(4) The individual listed as the "experienced person" on the applicant's licensing application may not work, as an employee or independent contractor as the "experienced person," for another licensee.

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; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-860-0070**

##### **Disclosure of Significant Developments**

(1) A licensee shall be required to notify the Director within 30 days of the occurrence of any of the following significant developments:

(a) Licensee filing for bankruptcy or reorganization.

(b) Notification of the institution of license revocation procedures against the licensee by any state.

(c) The filing of a felony indictment against a licensee, officer, director or principal;

(d) A licensee, officer, director or principal being convicted of a felony or misdemeanor involving fraud;

(e) Civil litigation, administrative actions, arbitration, and alternative dispute resolution proceedings involving a finding against a licensee, officer, director, or principal of \$10,000 or more.

(f) 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;

(g) Any changes in the information required pursuant to OAR 441-880-0030 for loan originators.

(h) 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.

(i) Any changes in the information required on the licensee's application form, including, but not limited to address changes, phone number changes, etc.

(2) The Director may request additional information regarding any of the occurrences outlined in subsections (1)(a) through (i).

Stat. Auth.: ORS 59.850 & 59.900

Stats. Implemented: ORS 59.860, 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

#### **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 transfer 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), ORS 59.865(10) & 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; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02

#### **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) & (5) of this rule or a letter of credit as specified in section (6) & (7) of this rule.

(2) Every person licensed as a mortgage banker or mortgage broker must maintain a surety bond as specified in section (4) & (5) of this rule or letter of credit as specified in section (6) & (7) 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 59.980, 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 minimum sum of \$25,000 from a company authorized to transact an insurance business in the State of Oregon. The amount of the surety bond shall not exceed \$50,000 for a single applicant. The surety bond shall be renewed or replaced annually.

(5) For each additional licensed branch location of the applicant engaging in residential mortgage transactions pursuant to ORS 59.845, the surety bond will increase by \$5,000 until such time as the surety bond reaches the maximum sum of \$50,000.

(6) A letter of credit shall be in a form and on terms approved by the Director in the minimum sum of \$25,000 from a commercial financial institution authorized to transact banking business in the State of Oregon. The amount of the letter of credit shall not exceed \$50,000 for a single applicant. The letter of credit shall be renewed or replaced annually.

(7) For each additional licensed branch location of the applicant engaging in residential mortgage transactions pursuant to ORS 59.845 the letter of credit will increase by \$5,000 until such time as the letter of credit reaches the maximum sum of \$50,000.

Stat. Auth.: ORS 59.850 & 59.900

Stats. Implemented: ORS 59.860, 59.969

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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(10) and 441-860-0050(3) licensees shall pay an audit charge in the amount of \$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; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02

#### 441-860-0130

##### Private Money Loans

A person is not "engaged in the business of making loans secured by an interest in real estate" as used in ORS 59.840(5)(b)(C) and (7)(b)(F) if the person is making a loan from their own funds and does not make more than 10 loans secured by an interest in residential real estate during any consecutive twelve month period, provided they do not advertise or otherwise hold themselves out as being in the business of making mortgage loans.

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.840

Hist.: FCS 4-1999, f. & cert. ef. 12-23-99

## 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 441-865-0090, "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 & ORS 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, ORS 59.900 & ORS 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 individual's 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; FCS 2-2004, f. & cert. ef. 8-5-04

#### 441-865-0050

##### Personnel Records

(1) Each employer 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.



(3) Each employer shall maintain the information required pursuant to OAR 441-880-0030 for loan originators.

Stat. Auth.: ORS 59.860 & ORS 59.900

Stats. Implemented: ORS 59.860 & Ch. 952, 2001 OL

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02

#### 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 441-865-0090, 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; and

(h) A copy of the final HUD 1.

(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 & ORS 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; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01

#### 441-865-0080

##### Investor Files

(1) In addition to all other books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, 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 & ORS 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 & ORS 59.900

Stats. Implemented: ORS 59.935

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93

#### 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" is 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(7)(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 term 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;

(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;

(8) Use of the following in direct mail advertising campaigns:

(a) Official looking emblems or logos, such as eagles, crests, or flags, which resemble a format similar to that used by any governmental agency;

(b) Envelopes which resemble an official government mailing, from entities such as the I.R.S., U.S. Treasury, a State Taxing Authority, or other governmental mailer;

(c) Slogans such as "Buy U.S. Savings Bonds" unless there also appears in a type of equal size and style a clear statement that the mailing is not from a government agency;

(d) Reference to a financial institution or the holder of an existing loan indicating approved association, affiliation or cooperation with such lender when none exists; or

(e) Any representation that the solicitor is associated with or affiliated with any agency, bank, thrift institution, credit union, finance company, or other lender, when none exists.

(f) "Direct Mail Advertising Campaign" is defined as any mailing made to Oregon residents by a licensee which is intended to advertise, offer, or solicit a mortgage banking loan or mortgage loan.

(9) Advertising:

(a) "Wholesale rates" to the public or using the phrase "wholesale rates" in an advertisement;

(b) Advertising a rate which is bought down from the lender over the life of the loan without disclosing in the ad that the rate is bought down and the cost of the buy down to the consumer; or

(c) Advertising any program which would be in violation of Regulation X, 24 CFR 3500.14, regarding kickbacks and unearned fees, including soliciting referrals with a promise to pay the advertising costs of any settlement provider.

(d) For purpose of this subsection, "advertising" and "advertisement" are defined as any distribution of information regarding loan products by the mortgage banker or mortgage broker to members of the public.

(10) Providing a savings statement to the borrower, unless:

(a) The amount of savings the borrower will realize can be projected with certainty;

(b) The amount of savings actually realized is within \$1000.00 of the amount projected;

(c) The savings statement includes a disclaimer that the actual amount of savings may vary; and

(d) The savings statement shows changing payments over the life of the loan when the loan being offered is an adjustable rate product.

(e) "Savings Statements" are defined as written material given to the consumer which outline how much a consumer may save in interest costs if they make additional payments above the required minimum monthly payment on their proposed or current mortgage.

(11) Requiring or permitting consumers to sign promissory notes and trust deeds prior to:

(a) The loan receiving final written loan approval;

(b) Full disclosure to the consumer of repayment terms; and

(c) The lender having funds available to fund the loan.

(12) Delaying release of loan funds to the borrower, the borrower's approved representative or escrow for more than one business day following recording of the lien.

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; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02

#### 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 to 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 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; FCS 2-2004, f. & cert. ef. 8-5-04

**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

**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(5);

(b) “Mortgage Broker” as described in ORS 59.840(7)

(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(5) and 59.840(7).

(3) “Financial Institution” means any institution as defined under ORS 706.008(10) 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 706.008(10), 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 708A.650.

(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 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 non-refundable 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 & ORS 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; FCS 4-1999, f. & cert. ef. 12-23-99

#### **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 & ORS 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 & ORS 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 59.980 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 OAR 441-865-0090.

(3) 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.

(4) 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.

(5) Funds disbursed from a trust account shall be by checks which are prenumbered and bear the words "Client 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.

(6) 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.

(7) 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.

(8) 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.

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; FCS 4-1999, f. & cert. ef. 12-23-99; Administrative correction 4-18-00; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 2-2004, f. & cert. ef. 8-5-04

## **DIVISION 880**

### **LOAN ORIGINATORS**

#### **441-880-0010**

##### **Certified Authority**

(1) An organization may apply to the Director to become a Certified Authority by filing an application in a form acceptable to the Director. The application must include:

- (a) Name, address, contact person, phone number and e-mail address;
- (b) Names of the principals of the organization; and
- (c) The bylaws or rules that will be utilized by the organization in selecting providers.

(2) The Director's approval for certification will be dependent upon:

- (a) The experience, knowledge, and professional ethics of the membership of the organization; and
- (b) The bylaws or rules for approval and withdrawal of provider applications and test and course content.

(3) Certification will remain effective until surrendered by the Certified Authority or revoked or suspended by the Director.

(4) Revocation or suspension of a Certified Authority will occur if the Certified Authority fails to follow its own bylaws or rules or fails to consider in good faith the test and course content in provider applications.

(5) The Certified Authority will review and approve or disapprove providers and the following matters:

- (a) The requirements and contents of the entry-level training course;
- (b) The examination on state and federal laws and rules relating to mortgage lending in this state;
- (c) The contents of all continuing education.

(6) The Certified Authority will be responsible for approving education offered by another state's mortgage lender program, provided the Director has determined that the laws of that state provide protection to the public that exceeds or is substantially similar to the protection provided by Oregon's mortgage lender law and rules.

Stat. Auth.: ORS 59.977

Stats. Implemented: ORS 59.977

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-880-0020**

##### **Educational Requirements**

(1) Each loan originator required to take an entry-level course and pass an examination on state and federal laws and rules relating to mortgage lending in this state must complete a Certified Authority approved course and pass a Certified Authority approved examination within six months from:

(a) January 30, 2002, if the person is employed as a loan originator at that time; or

(b) The date the person is first functioning as a loan originator.

(2) If the loan originator fails to complete the course and pass the examination within the six-month period, the person may not work as a loan originator until completing the entry-level course and passing the examination.

(3) Each loan originator must complete 20 hours of continuing education within 24 months of their Notification Date and every subsequent 24-month period. There shall be no carryover of hours of continuing education between periods.

(4) Any person who fails to meet the continuing education requirement may not function as a loan originator until they take a Certified Authority approved entry-level course and pass a Certified Authority approved examination on state and federal laws and rules relating to mortgage lending in this state.

Stat. Auth.: ORS 59.977

Stats. Implemented: ORS 59.977

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

#### **441-880-0030**

##### **Employer's Requirements**

(1) Not later than January 30, 2002, employers are required to provide the Director with a list of all loan originators and the information in section (3) of this rule.

(2) Within 30 days of a person starting to function as a loan originator or ending functioning as a loan originator, the employer must notify the Director by amending their licensee application in a form approved by the Director.

(3) If the notice is for a person starting to function as a loan originator, the amendment shall include the following information about the loan originator:

- (a) Name;
- (b) The start date as a loan originator;
- (c) Current business and home address, telephone, and e-mail address;

(d) Social security number or a detailed physical description of the loan originator including: height, weight, eye and hair color, and a description of any unique physical characteristics such as birthmarks and tattoos;

(e) Date of birth; and

(f) Certification of compliance with ORS 59.967(2), 59.969(4)(a) & (b) and 59.971.

(4) If the notice is for a person ending functioning as a loan originator, the amendment should include the following information:

- (a) Name;
- (b) The ending date as a loan originator;
- (c) Last known contact information; and
- (d) The reason for termination if it was for failure to comply with state or federal laws, regulations or rules.

(5) At the time for each mortgage banker/broker license application or renewal, the employer must notify the Director of the names and current contact information of the loan originators employed, including certification of compliance with ORS 59.967(2), 59.969(4)(a) & (b) and 59.971.

(6) No employer may hire, or continue to employ, a person to serve as a loan originator who has not met the educational requirements of ORS 59.840 through 59.960, ORS 59.969 & 59.975 and OAR 441-880-0020.

(7) As courses are satisfactorily completed by the loan originators, the employer shall retain a copy of the completion certificate in the loan originator's personnel file for review by the Director at the time of the next occurring examination or for five years, whichever first occurs.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.900

Stats. Implemented: ORS 59.969

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

**441-880-0040****Loan Originator's Requirements**

(1) It is unlawful for any person to act as a loan originator unless the educational requirements in ORS 59.969 & 59.975 and OAR 441-880-0020 are met.

(2) The loan originator must retain the original completion certificate provided following satisfactory course completion for five years and provide a copy to the employer.

(3) Only loan originators employed by exempt employers may file notification of completed education directly with the Director. A copy of the completion certificate may be provided or notification may be provided electronically of the course(s) name and number, the number of hours of each course, the completion date(s), and the score(s) or pass/fail result(s), if applicable.

(4) A loan originator may notify the Director of termination of the loan originator's employment including the end date, reason for termination, and current contact information for the loan originator.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 59.975

Stats. Implemented: ORS 59.975

Hist.: FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 2-2004, f. & cert. ef. 8-5-04

**441-880-0050****Criminal Records Check**

(1) Prior to employing a loan originator as defined in ORS 59.840(4), a licensee must conduct a criminal records check of the person, using the person's full legal name, date of birth, place of birth and social security number, searching federal records and all state records where the person has resided in the past 10 years. The licensee must use the services of law enforcement agencies or an independent private company that complies with the federal Fair Credit Reporting Act to conduct the criminal records check. A criminal records check conducted for any other employer within the previous six months will fulfill this requirement, provided that the scope of the previous check is within the parameters of this section and the licensee obtains a copy of the records check for his files.

(2) A criminal records check for a loan originator employed by a licensee on the effective date of this rule must be completed within 120 days.

(3) A loan originator applicant may not be hired and a currently employed loan originator's employment must be immediately terminated if the criminal records check discloses a disqualifying conviction as described in section (4) of this rule, provided that a licensee may retain a current employee in a capacity other than as a loan originator during the no-action letter process described in section (6) of this rule.

(4) The categories of criminal convictions that will prevent a person from acting as a loan originator are:

(a) Crimes punishable by death or imprisonment in excess of one year under the law under which the person was convicted, or

(b) Crimes involving false statement or dishonesty, including, but not limited to:

(A) Theft, misappropriation, or misapplication, of monies, services or goods in any amount;

(B) Falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) Taking of bribes, kickbacks, or other illegal compensation; or

(D) Deceiving the public or any person by means of swindling, false advertising or like acts.

(5) Within three business days of receiving the criminal records check report, the licensee shall notify the Director of the identity of any person for whom a criminal records check discloses a disqualifying conviction, using the Loan Originator Notification Form [Form 440-2772, available online and from the Department].

(6)(a) Within 20 business days of notification to the Director as described in section (5) of this rule, a licensee who desires to hire or retain a loan originator for whom a criminal records check discloses a disqualifying conviction may make a written request for a letter from the Director that no enforcement action will be taken against the licensee with respect to the employment of such person. The request must contain the following information:

(A) The name of the person;

(B) A description of the disqualifying conviction from the criminal records check; and

(C) Supporting documents or other information demonstrating that this conviction is erroneously entered on this person's record or should otherwise not be deemed to be a disqualifying conviction.

(b) The Director in determining whether to grant the requested no-action letter and in determining whether conditions should be imposed if the no-action letter is granted may consider, but is not limited to considering:

(A) The licensing and consumer complaint history of the licensee;

(B) Input from any mortgage professional association; and

(C) The interests of consumers.

(c) A licensee who hires or retains a loan originator who has a disqualifying conviction after a requested no-action letter is denied, or without requesting a no-action letter, is subject to penalties as provided by ORS 59.992 and 59.996.

(7) Criminal records check documents, including any no action letter or denial of a no action letter request, received by the licensee shall be maintained in a secure location separate from personnel records, and shall be made available to the Director or an authorized representative of the Department for examination upon reasonable notice. These records shall be preserved by the licensee for three years after termination of employment. When the person who is subject to the check is not employed, the records shall be preserved by the licensee for two years from the date of receipt. After the retention period, the records shall be destroyed in a secure manner such as by shredding.

Stat. Auth.: ORS 59.971, 59.972

Stats. Implemented: ORS 59.971, 59.972

Hist.: FCS 5-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 2-2004, f. & cert. ef. 8-5-04

**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; FCS 4-1999, f. & cert. ef. 12-23-99

## 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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 Consumer and Business Services may issue a certificate of registration to a debt consolidation business upon receipt of a completed application and required fee of \$200.

(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 institutions 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, the original of \$10,000 surety bond or deposit payable to Department of Consumer and Business Services.

Stat. Auth.: ORS 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 814-106-0005; FCS 9-1988, f. 4-12-88, cert. ef. 5-1-88; FCS 5-2000, f. & cert. ef. 3-9-00

#### 441-910-0020

#### Duration of Registration

(1) All registrations shall be issued on the date all registration qualifications are met and be valid for two years.

(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 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; FCS 5-2000, f. & ef. 3-9-00

#### 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 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 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 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 Consumer and Business Services, 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 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; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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 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 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 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

#### 441-910-0095

##### Fee for Education Class

(1) A debt consolidation agency may submit a written request for approval of fees charged for education classes at least 30 days prior to conducting the class.

(2) The request shall enumerate all expenses by category and include a description of the purpose of the class and a description of all materials for which the debt consolidation agency seeks to charge consumers.

(3) Expenses for which approval is sought must not exceed the actual cost for materials and services.

(4) If the expenses for which approval is sought are associated with a federally or state mandated class, the debt consolidation agency must identify the class in their request and indicate whether or not they have been certified to provide the education.

(5) Approval by the Director shall be made in writing for each category of class and shall continue for each such class taught until cancelled or withdrawn by the Director.

(6) Prior to making any substantive changes to materials used in an approved class or any increase in fees charged, the debt consolidating agency must submit the proposed changes to the Director for review and approval.

Stat. Auth.: ORS 697.632

Stats. Implemented: ORS 697.692(5)

Hist.: FCS 5-2000, f. & cert. ef. 3-9-00; FCS 2-2004, f. & cert. ef. 8-5-04

#### 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 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 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 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 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; FCS 2-2004, f. & cert. ef. 8-5-04

#### 441-910-0120

##### Response to Claims

(1) A copy of a claim received by the Department of Consumer and Business Services shall be sent to the debt consolidating business.

(2) The debt consolidating business shall respond in writing to the Department of Consumer and Business Services within 15 working days.

Stat. Auth.: ORS 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; FCS 2-2004, f. & cert. ef. 8-5-04

#### 441-910-0130

##### Civil Penalties

Civil penalties shall be \$400 for the first offense and \$1,000 for each subsequent offense.

Stat. Auth.: ORS 697

Stats. Implemented: ORS 697.832

Hist.: DC 2-1984, f. & ef. 1-16-84; Renumbered from 814-106-0070

## DIVISION 925

### LICENSING OF SELLERS OF TRAVEL

#### 441-925-0010

##### Application for Certification of a Seller of Travel Association

(1) Each person desiring Certification as a State of Oregon Certified Association shall make application to the Director by submitting the following:

(a) A letter, signed by a person authorized to act on behalf of the association, requesting Certification;

(b) A current list of members or if available on the internet, the web page address where the list may be accessed;

(c) A copy of the association's rules and/or bylaws, which shall include provisions covering those items enumerated in ORS 646.189(1)(a) through (e);

(d) A copy of the association's business plan and a copy of the most recent annual financial statement;

(e) A description of the association's procedure or mechanism for:

(A) Disciplining members;

(B) Determining compliance with financial security minimum requirements; and

(C) Determining compliance with association's code of ethics and other prerequisites to membership;

(f) The date and place the association was formed;

(g) Current address, contact name, phone and FAX number, E-mail address, if any; and,

(h) A certificate of existence from the state where the principal office is located.

(2) If the Director determines that the applicant has satisfied the requirements of ORS 646.185 through 646.195 and these rules the Director shall issue a certificate evidencing certification of the association and post notice of the certification on the Division's web page, <http://dfcs.oregon.gov>.

Stat. Auth.: ORS 646.187 & ORS 646.189

Stats. Implemented: ORS 646.187 & ORS 646.189

Hist.: DO 3-1999, f. & cert. ef. 11-8-99; DO 2-2001(Temp), f. & cert. ef. 9-11-01 thru 2-1-02; DO 4-2001, f. & cert. ef. 11-7-01; Renumbered from 440-035-0050; FCS 3-2004, f. & cert. ef. 9-30-04

**441-925-0020****Examination of Certified Associations**

(1) The Director shall examine the books and records of the Certified Association and may conduct the examination at the Certified Association's office location or at the office of the Director.

(2) The examination shall include a review of the minutes of the association meetings, as well as minutes of membership committees and of the committees responsible for ensuring compliance with the association's bylaws, rules and code of ethics to determine the Association's compliance with the provisions of ORS 646.185 through 646.195, these administrative rules, and the business plan, bylaws and code of the Association.

(3) Certified Associations shall pay an examination charge in the amount of \$60.00 an hour for each person used in performance of the examination. If an employee of the Department is required to travel out of state to perform the work described by section (2), the Certified Association shall be liable for reasonable cost of travel, lodging, food and rental car, if any.

(4) The Director shall conduct routine examinations at least once every 24 months and may conduct for cause examinations at any time.

Stat. Auth.: ORS 646.191

Stats. Implemented: ORS 646.191

Hist.: DO 3-1999, f. & cert. ef. 11-8-99; DO 2-2001(Temp), f. & cert. ef. 9-11-01 thru 2-1-02; DO 4-2001, f. & cert. ef. 11-7-01; Renumbered from 440-035-0060; FCS 3-2004, f. & cert. ef. 9-30-04

**441-925-0030****Dispersal of Unspent Licensing Fees**

(1) A Certified Association of Sellers of Travel may apply for a grant of funds remaining in the Seller of Travel program fund balance provided:

(a) The association has submitted a complete application for Certification ;

(b) The Director has determined that the association is constituted in a manner to afford significant provisions and mechanisms for consumer protection; and

(c) The Director has certified the Association.

(2) A Certified Association may be granted an initial grant of \$5,000 or in an amount determined by the director. Initial grants shall be made on a first come first served basis.

(3) A Certified Association may apply for subsequent grants in an amount determined by the director provided:

(a) The association satisfies the requirements of an annual examination and is in compliance with the provisions of ORS 646.185 to 646.195, and OAR 441-925-0010 to 441-925-0040; and

(b) The Seller of Travel program fund balance has sufficient funds available.

Stat. Auth.: ORS 646.187

Stats. Implemented: ORS 646.191(3)

Hist.: DO 3-1999, f. & cert. ef. 11-8-99; DO 1-2003, f. & cert. ef. 5-27-03; Renumbered from 440-035-0070; FCS 3-2004, f. & cert. ef. 9-30-04

**441-925-0040****Notice of Changes or Amendments**

(1) When a Certified Association wishes to amend any of the items enumerated in ORS 646.187, the Certified Association must submit a draft of the proposed change at least 30 days prior to adoption.

(2) If the Director finds that the proposed amendments would no longer satisfy the requirements of ORS 646.185 through 646.195

or these rules, the Director shall notify the Association in writing that adoption will result in a suspension or revocation of their Certificate, and provide the reasons for the Director's findings.

(3) If the Certified Association adopts the proposed amendments the Director shall suspend or revoke the certification pursuant to ORS 646.193.

Stat. Auth.: ORS 646.193

Stats. Implemented: ORS 646.193 & ORS 646.187

Hist.: DO 3-1999, f. & cert. ef. 11-8-99; DO 2-2001(Temp), f. & cert. ef. 9-11-01 thru 2-1-02; DO 4-2001, f. & cert. ef. 11-7-01; Renumbered from 440-035-0080; FCS 3-2004, f. & cert. ef. 9-30-04

**DIVISION 930****PREARRANGEMENT AND PRECONSTRUCTION PLANS****441-930-0010****Definitions**

The following definitions apply to OAR 441-930-0010 to 441-930-0360:

(1) "Applicant" means a person applying to the Director for a Certificate to market prearrangement plans or for an Order of Registration to serve as a master trustee.

(2) "Department" means the Department of Consumer and Business Services.

(3) "Funeral Plan Trust Account" means an account in a depository as defined by ORS 97.923 established and administered by a certified provider, into which is deposited funds received from the sale of prearrangement plans.

(4) "Market" means to offer, to contract for sale, to sell or advertise, in the state of Oregon, or to an Oregon resident, merchandise or services under a prearrangement plan.

(5) "Master Trustee" means a person who meets the definition of a master trustee defined in ORS 97.923(9).

(6) "Prearrangement Plan" means "Preconstruction Sales" or "Preconstruction Sales Contract" or "Prearrangement Sales" or "Prearrangement Sales Contract" as defined by ORS 97.923.

(7) "Preneed Trust Agreement" means any agreement governing a funeral trust fund established to receive the proceeds of a prearrangement plan and administered by a registered independent master trustee.

(8) "Provider" means a person defined in ORS 97.923(13).

(9) "Registrant" means a master trustee holding a Certificate of Registration, issued by the Director.

(10) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement; or

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit.

Stat. Auth.: ORS 97.933, 97.935, 97.945

Stats. Implemented: ORS 97.933, 97.935, 97.945

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0010; FCS 3-2004, f. & cert. ef. 9-30-04

**441-930-0020****Master Trustees**

An entity shall not operate as a master trustee as defined in ORS 97.923(9) unless:

(1) That entity has obtained an Order of Registration from the Director; and

(2) Such registration is in force at the time the entity is performing the functions of a master trustee.

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0020; FCS 3-2004, f. & cert. ef. 9-30-04

**441-930-0030****Applications for Registration of Master Trustees**

(1) Each person desiring to register as master trustee shall apply by submitting a written application with the Director on forms prescribed by the Director.



(2) The application must contain:

(a) Information concerning the applicant's identity, address, and personal background and business, professional or work history of all executive officers and directors or individuals performing similar duties, and owners of 10% or more on a form approved by the Director;

(b) Proof of registration or good standing of the applicant's business name in the state or country under which it is organized;

(c) The depositories the applicant intends to use for funds received under the appointment from the certified provider and notification of any changes at or before the time of the change;

(d) Financial statements including:

(A) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles;

(B) If the audited financial statement is more than six months old, internally prepared statement for the most recent month end.

(e) Any other pertinent information as the Director may require; and

(f) A registration fee of \$ 275.00.

(3) The Director may conduct a background check of any person applying for registration. The background check may include information solicited from the Oregon State Police.

(4) Initial registration period shall be for a period of 1 year from the date of initial registration.

(5) Unless there are grounds for denying the application pursuant to OAR 441-930-0310, the Director shall issue an Order of Registration.

(6) The Order of Registration is a continuing registration and remains in effect until the registration is surrendered by the registrant or revoked or suspended by the Director as provided for in OAR 441-930-0310.

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0030; FCS 3-2004, f. & cert. ef. 9-30-04

#### 441-930-0040

##### Material Changes, Amendments, and Notice of Civil and Criminal Actions

(1) A master trustee must file an amendment to its application with the Director if there is a material change to any information on the original application including:

(a) Bankruptcy;

(b) Civil or criminal actions described on the application;

(c) Disciplinary disclosure answers on the application;

(d) Change in additional affiliated business entity name;

(e) Change in control or ownership;

(f) Change in form of organization;

(g) Change of address; or

(h) Change in scope of business.

(2) The master trustee must file amendments with the Director within 30 days of the occurrence of the material change. If a completed amendment cannot be filed within 30 days, the master trustee shall file with the Director 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) The registered master trustee shall file amendments to the application on a form provided by or acceptable to the Director.

(4) For purposes of this rule, "civil action" means an action filed in a court of law or an action in a formal process of alternative dispute resolution.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0040; FCS 3-2004, f. & cert. ef. 9-30-04

#### 441-930-0050

##### When Registration Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the registration of master trustees as provided under ORS 97.923 to 97.949 and OAR 441-930-0030.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that fees are insufficient;

(b) Documents required to be submitted to the Director by OAR 441-930-0030 have not been submitted by the applicant; or

(c) Additional information requested by the Director has not been submitted to the Director by the applicant.

(3) An application shall be deemed abandoned if:

(a) The application has been on file for a minimum 180 days;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within 30 calendar days of the date of warning.

(4) The Director shall refund registration fees received for abandoned applications.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0050; FCS 3-2004, f. & cert. ef. 9-30-04

#### 441-930-0060

##### Master Trustee Reporting Requirements

No later than April 1, each master trustee shall file with the Director on a prescribed form an aggregate report for the previous calendar year containing the following information related to preneed activity:

(1) Beginning balances of deposited funds and accumulated earnings in the trust account;

(2) The deposits to the trust account(s) during the year;

(3) The amount of earnings on deposits to the trust account during the year;

(4) The amounts of withdrawals of deposits from the trust accounts during the year;

(5) The name and address of all Oregon certified providers for whom the master trustee administers funds;

(6) A copy of the master trustee's fiscal year's audited financial statements and if not current within six months of the filing date, internally prepared statements through the most recent month end; and

(7) The annual report fee pursuant to OAR 441-930-0270.

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0060; FCS 3-2004, f. & cert. ef. 9-30-04

#### 441-930-0070

##### Annual Examination of Master Trustee

(1) Each master trustee that is or should be registered may be subject to an annual examination by the Director. The Director may, at the Director's discretion, conduct an examination at the office of the master trustee or at the office of the Director. The examination will be of the condition and resources of the master trustee, including:

(a) A review of the minutes of the annual meeting of owners and any special meeting;

(b) A review of all board or management meetings;

(c) Operating policies and procedures;

(d) Security of funds;

(e) Investment vehicle;

(f) Receipt and dispersal of funds;

(g) Investment and banking accounts;

(h) Audit reports;

(i) Regulatory audit reports.

(2) A master trustee shall pay to the Director the expenses and costs of examination pursuant to OAR 441-930-0270.

(3) At the discretion of the Director, a master trustee located outside Oregon may make the books and records available for examination in Oregon.

Stat. Auth.: ORS 97.935

Stats. Implemented: ORS 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0070; FCS 3-2004, f. & cert. ef. 9-30-04

### **Certified Providers**

#### **441-930-0200**

##### **Certification Requirement**

A entity shall not engage in prearrangement sales or preconstruction sales, as defined in ORS 97.923 unless:

(1) That entity has obtained an Order of Certification from the Director; and

(2) Such certification is in force at the time of the sale.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0200; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0210**

##### **Application for Original Order of Certification**

(1) Each entity desiring to obtain an Order of Certification shall apply by submitting a written application with the Director on forms prescribed by the Director.

(2) An application must contain:

(a) A list of all officers, directors, and 10% or more owners;

(b) Information concerning the applicant's identity, address, and the business, professional or work history of all executive officers and directors or individuals performing similar duties, and 10% or more owners;

(c) Proof of registration or good standing of the applicant's business name in the state or country under which it is organized;

(d) The depositories the applicant intends to use for funds received from the sale of the preneed plans and notification of any changes at or before the time of the change; and

(e) For providers who do not appoint a master trustee, financial statements including:

(A) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(B) If the audited financial statement is more than six months old, internally prepared statement for the most recent month end.

(f) A list of prearrangement plans to which the applicant was a party at the date of application; and

(g) A registration fee of \$275.00.

(3) The Director may conduct a background check of any person applying for registration. The background check may include information solicited from Oregon State Police.

(4) If the applicant is an individual or sole proprietorship, the applicant's social security number. Provision of this number is mandatory and failure to provide the applicant's social security number shall be considered grounds for denying certification to the applicant.

(5) Initial registration period shall be for a period of one year from the date of initial registration.

(6) Unless there are grounds for denying the application pursuant to ORS 97.948, the Director shall issue an Order of Certification.

(7) The certificate issued to certified providers is continuing and remains in effect until surrendered by the Provider or revoked or suspended by the Director.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0210; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0220**

#### **Renewal Application for Certified Provider**

Submission of the annual report pursuant to OAR 441-930-0250 and annual registration fees shall constitute renewal of the application for certification.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0220; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0230**

##### **Material Changes, Amendments, and Notice of Civil and Criminal Actions**

(1) A certified provider must file an amendment to its application with the Director if there is a material change to any information on the original application including:

(a) Bankruptcy;

(b) Civil or criminal actions described on the application;

(c) Disciplinary disclosure answers on the application;

(d) Change in additional affiliated business entity name;

(e) Change in control or ownership;

(f) Change in form of organization;

(g) Change of address; or

(h) Change in scope of business.

(2) The certified provider must file amendments with the Director within 30 days of the occurrence of the material change. If a completed amendment cannot be filed within 30 days, the certified provider shall file with the Director 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 provided by or acceptable to the Director.

(4) For purposes of this rule "civil action" means an action filed in a court of law or actions in a formal process of alternative dispute resolution.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0230; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0240**

##### **When Certification Application Deemed Abandoned**

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the certification or renewal of providers as set forth in ORS 97.923 to 97.949 and OAR 441-930-0210.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that fees are insufficient;

(b) Documents required to be submitted to the Director by OAR 441-930-0210 have not been submitted by the applicant; or

(c) Additional information requested by the Director has not been submitted by the applicant.

(3) An application shall be deemed abandoned if:

(a) The application has been on file for a minimum 180 days;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within 30 calendar days of the date of warning.

(4) The Director shall refund registration fees received for abandoned applications.

(5) An applicant whose application has been abandoned may reapply by submitting a new application, including new fees.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0240; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0250**

##### **Annual Report Required of Prearrangement Plan Obligors**

(1) Each certified provider is responsible for and shall file annually with the Director by April 1 of each year a report on forms supplied or approved by the Director, and pay an annual report fee. The report shall cover the preceding calendar year and shall include:

(a) A statement of transactions for prearrangement plans financed by funeral plan trust accounts for the preceding reporting period including the beginning balance, deposits made during the reporting period, deposits in transit, interest earnings, and withdrawals made during the reporting period;

(b) A statement of transactions for prearrangement plans financed by other financing sources, that do not include insurance policies, for the preceding reporting period;

(c) For certified providers who do not utilize a master trustee, a copy of the registrant's most recent audited consolidated annual financial statement, including a balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position. All financial statements must be prepared by an independent certified public accountant in accordance with generally accepted audit procedures;

(d) For the most recent quarter for which data is available prior to the date of the renewal application, but not more than 120 days prior to the renewal date, a description of the number of preneed sales, and the dollar amount of those sales;

(e) A description of any material changes to any of the information submitted by the registrant on the registrant's original application that have not previously been reported to the Director on any other report required to be filed with the Director; and

(f) Such other information as the Director may require.

(2) Persons who meet the following conditions shall have the option of filing a short form annual report:

(a) The person has ceased marketing prearrangement plans and is no longer certified to market prearrangement plans; and

(b) The prearrangement contracts for which the person is obligated number less than 20 or have a cumulative value of less than \$25,000.

(3) The Director shall require a certified provider that discontinues the sale of prepaid funeral benefits, but has outstanding contracts, to continue to submit a short form annual report until all of the contracts are fully discharged.

(4) The short form annual report shall contain the following information:

(a) An attestation by the person reporting that indicates that the person no longer holds an Order of Certification to market prearrangement plans and that prearrangement plans for which that person is obligated at the annual report date number less than 20 or have accumulative value of less than \$25,000; and

(b) A list of the prearrangement contracts remaining on deposit in trust funds, their balance at annual report date, and the financial institutions or master trusts at which they are deposited.

(5) The Director shall collect an annual report fee from each filing provider as described in OAR 441-930-0270.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; DOC 2-2002(Temp) f. & cert. ef. 2-12-02 thru 8-1-02; DO 3-2002, f. & cert. ef. 5-23-02; Renumbered from 440-300-0250; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0260**

##### **Examination of Certified Providers**

(1) Each certified provider is subject to an examination by the Director. The Director may conduct an examination of the condition and resources, including a review of the sales contracts used by the certified provider, to determine whether the certified provider is complying with requirements of ORS 97.923 to 97.949, the laws of this state and the rules of the Director.

(2) A certified provider shall pay to the Director all expenses and costs pursuant to the provisions of OAR 441-930-0270.

(3) Upon the motion of the Director or upon receipt of a complaint by a customer of the registrant, the Director may examine the provider with respect to any violation. In lieu of an annual on-site examination, the Director may accept a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the Director.

(4) The Director may examine or audit a record relating to prepaid funeral benefits at any place and in any manner the Director considers necessary to protect the interests of the purchasers or beneficiaries.

(5) Certified providers who maintain books and records outside the state of Oregon may, at the discretion of the Director, produce the records in Oregon for examination.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0260; FCS 3-2004, f. & cert. ef. 9-30-04

##### **Certified Providers and Registered Master Trustees**

#### **441-930-0270**

##### **Fees Assessed to Certified Providers and Registered Master Trustees**

The Director shall collect the following fees from each registered master trustee and certified provider:

(1) A registration or certification fee — \$ 275.

(2) Annual Report Fee — \$275 per trustee, provider and/or cemetery or crematorium location. For purposes of the annual report fee, each branch location of a registrant's funeral establishment is a separate establishment and each location of a cemetery or crematorium is a separate location.

(3) Short form Annual Report Fee — \$10.

(4) Exam Fees — \$60 per hour for each examiner, plus costs of an examination.

(5) If the books and records are located outside Oregon, the certified provider or master trustee must pay travel and per diem expenses.

(6) In addition to the charges fixed by this rule, the Director shall collect any additional costs directly attributable to extra services provided under ORS 97.923 to 97.949 or these rules.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.933, 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0270; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0280**

##### **Supervision of Associated Persons by Certified Providers and Registered Master Trustees.**

The conduct of associated persons employed by the certified provider or master trustee is the direct responsibility of the certified provider or master trustee:

(1) Every associated person of the certified provider or master trustee shall be subject to the supervision of a supervisor designated by such certified provider or master trustee. The supervisor may be the certified provider or master trustee in the case of a sole proprietor, or a partner, officer or office manager or person occupying a similar position of management and control.

(2) Every certified provider and master trustee shall establish, maintain and enforce written procedures, a copy of which shall be kept in the business office, which shall set forth the procedures adopted by the certified provider or master trustee to comply with the duties imposed on the certified provider or master trustee under ORS 97.933(5).

(3) For purposes of this rule, "Associated Person" are individuals, including salespersons defined in ORS 97.923(15) working on behalf of a certified provider or master trustee.

Stat. Auth.: ORS 97.933

Stats. Implemented: ORS 97.933

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0280; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0290**

##### **Unprofessional Conduct**

A person who engages in the following conduct is subject to probation, suspension, revocation or denial of a certification or registration and assessment of a civil penalty pursuant to ORS 97.948 and OAR 441-930-0310:

(1) Furnishing false or misleading information to the Director in obtaining, renewing, reinstating, or maintaining certification or in connection with the filing of an annual report or complying with an investigation;

(2) Failing to furnish accurate and understandable price information to consumers;



(3) Employing any unconscionable tactic in connection with the offer or sale of a prearrangement plan;

(4) Failing to make and verify trust deposits in the amounts and within the time periods specified in ORS 97.941.

(5) Withdrawing money from a trust account in excess of what is permitted pursuant to ORS 97.943;

(6) Failing to comply with the annual reporting requirements as required by ORS 97.933 or these rules;

(7) Failing to provide the goods and services agreed to in the sales contract;

(8) Using trust funds for non-trust purposes;

(9) Failing to release trust funds to the rightful payee within 30 days of the date of request for release; or

(10) Failing to comply with any other provisions of ORS 97.923 to 97.949, or these rules.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.933, 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0290; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0300**

##### **Notice of Complaint**

(1) Each certified provider and each master trustee 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 any regulatory jurisdiction over prearrangement plans, 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) The certified provider or master trustee shall notify the Director within 10 days of learning of any action initiated by a law enforcement agency or regulatory agency against any of its partners, officers, directors, or associated persons registered in Oregon on the basis of something other than a complaint from the certified provider or master trustee.

(3) The certified provider or master trustee shall file a copy of any finding, censure, fine, suspension, or expulsion made as a result of any such complaint with the Director within ten days following such action.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.933, 97.935

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0300; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0310**

##### **Revocation, Suspension and Denial of Certificate or Registration**

The Director may impose a civil penalty or probation, or revoke, suspend or deny an Order of Certification of a certified provider or an Order of Registration of a Master Trustee when one or more of the following conditions exist:

(1) The certified provider's license under ORS 692.160 expires or is suspended or revoked by the State Mortuary and Cemetery Board;

(2) The certified provider or master trustee fails to submit the annual report required by ORS 97.933 and OAR 441-930-0060;

(3) The certified provider or master trustee fails to submit the annual report fee required by OAR 441-930-0270;

(4) The certified provider or master trustee fails to maintain or denies the Director access to the financial records and supporting documents necessary to audit the licensee or registrant's annual report;

(5) The certified provider or master trustee has filed a materially false or misleading report with the Director;

(6) The certified provider is, in the judgment of the Director, unable or unwilling to deposit prearrangement plan receipts within five days as required by ORS 97.941;

(7) The certified provider or master trustee fails to account to interested persons for monies received;

(8) The certified provider or master trustee has willfully or repeatedly violated or failed to comply with any provision of ORS 97.923 to 97.949, or OAR 441-930-0010 through 441-930-0400;

(9) The certified provider or master trustee is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business of a certified provider or master trustee; or

(10) The certified provider or master trustee is the subject of disciplinary action by another state or government agency provided the activity subject to discipline would constitute a violation of Oregon law or administrative rules.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0310; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0320**

##### **Notice Requirements**

(1) The Director shall provide written notice to the provider and to the State Mortuary and Cemetery Board of the Director's intent to: impose probation or a civil penalty; revoke, suspend or deny an Order of Certification or Order of Registration.

(2) The Director shall provide written notice of the Director's Final Order to: impose probation or a civil penalty; revoke, suspend or deny an Order of Certification to each depository or master trustee known by the Director to hold prearrangement plan trust accounts for which the certified provider is named.

(3) The Director shall provide written notice of the Director's Final Order to: impose probation or a civil penalty; revoke, suspend or deny an Order of Registration to each certified provider known by the Director to have deposited trust funds with the master trustee.

(4) The notice required in section 1 through 3 of this rule shall state the reasons for the action, the effective date of the action, and for notice in section (1) a statement of the certified provider or master trustee's right to request a hearing under ORS Chapter 183.

(5) The action shall become final after notice, opportunity to be heard, and a hearing, if requested, is held pursuant to the provisions of ORS 183.310 to 183.550, governing contested cases.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.948

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0320; FCS 3-2004, f. & cert. ef. 9-30-04

#### **441-930-0330**

##### **Records to be Retained; Retention**

(1) Each certified provider and master trustee shall maintain records to document the balances and transactions included in its annual report filed pursuant to OAR 441-930-0060 and 441-930-0250 and shall retain these records for examination by the Director. Each certified provider and master trustee shall make, keep and preserve the following books, accounts and other records for a period of three years. The records required to be maintained must include, but are not limited to:

(a) Workpapers documenting preparation of the annual report;

(b) Any and all general ledger or subsidiary ledger account records relating to prearrangement plans;

(c) Receipts register;

(d) Sales registers evidencing delivery of merchandise and/or services;

(e) Workpapers documenting distribution of interest income to individual trusts in a common trust account;

(f) Prearrangement contract files, trust agreement files, and other supporting documentation related to prearrangement transactions;

(g) Bank statements; and

(h) Statements from other financial institutions.

(2) Books, accounts, and other records required to be maintained under section (1) may be maintained:

(a) In a photographic, electronic and other similar form; or

(b) At a location outside Oregon, so long as the books, accounts and other records are made accessible to the Director.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0330; FCS 3-2004, f. & cert. ef. 9-30-04

**441-930-0340**

**Examination Report**

Upon completion of an examination conducted pursuant to OAR 441-930-0070 or 441-930-0260 the Director shall issue a written report to the certified provider or master trustee indicating the examination procedures applied and the examination findings.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.947

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0340; FCS 3-2004, f. & cert. ef. 9-30-04

**441-930-0350**

**Funeral and Cemetery Consumer Protection Trust Fund**

The Director shall order restitution from the Funeral and Cemetery Consumer Protection Trust Fund when the following conditions are met:

(1) A claim for restitution is submitted to the Director on forms supplied or approved by the Director accompanied by the documentation specified by the Director;

(2) The loss claimed was incurred on a pre-arrangement plan entered into after September 27, 1987;

(3) The Director has reviewed the claim form and accompanying documentation and determined that a loss was incurred by the claimant on a prearrangement plan and that this loss is non-collectible from the seller of the plan;

(4) The claim for restitution does not exceed the sales price of the prearrangement plan, which is the subject of the claim plus interest at the statutory rate; and

(5) Sufficient funds are available in the Funeral and Cemetery Consumer Protection Trust Fund to pay the claim. The Director shall provide written notice of its intent to order restitution or not to order restitution on a claim to the maker of the claim and to the individual or firm that is the subject of the claim.

(6) The notice shall state the reasons for the action, the effective date of the action, and a statement of the registrant's right to request a hearing under ORS Chapter 183. The action shall become final after notice, opportunity to be heard, and hearing pursuant to the provisions of ORS 183.310 to 183.550.

Stat. Auth.: ORS 97.945

Stats. Implemented: ORS 97.945

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0350; FCS 3-2004, f. & cert. ef. 9-30-04

**Endowment Care Cemeteries**

**441-930-0360**

**Additional Surety Bond Requirements for Endowment Care Cemeteries**

(1) An individual or firm electing to file a surety bond or letter of credit to meet one of the requirements of ORS 97.929(1)(c)(C) regarding deposits of funds received from agreements to sell or sales of burial vaults or markers for installation in an endowment care cemetery and for sale of crypts or niches not in existence at the time of the sale, shall submit a bond or letter of credit in the amount of \$10,000.

(2) Upon notification from the surety of notice of intent to cancel the surety bond or from a financial institution of notice of intent to withdraw a letter of credit, the Director shall send written notice to the endowment care cemetery. This notice shall be sent by certified mail within three business days of receipt of notification by the Director from the surety. Failure to send the notice within three business days will not preclude the endowment care cemetery from being subject to the provisions of ORS 97.923 to 97.949 and 692.180.

(3) An endowment care cemetery will become subject to the provisions of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 if an effective bond or letter of credit is not received by the Director no later than 5:00 pm Pacific Time on the day the bond is canceled or the letter of credit withdrawn.

(4) 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.

Stat. Auth.: ORS 97.933, 97.935

Stats. Implemented: ORS 97.929

Hist.: DO 1-2002, f. & cert. ef. 1-10-02; Renumbered from 440-300-0360; FCS 3-2004, f. & cert. ef. 9-30-04

**DIVISION 950**

**REGISTRY OF INTERNATIONAL  
TRADE CONSULTANTS**

**441-950-0010**

**Definitions**

(1) International Trade Consultant" or "consultant" means a person defined in ORS 705.730(4).

(2) "Director" means the Director of the Department of Consumer and Business Services.

(3) "Registry" means the listing of international trade consultants maintained by the Director.

Stat. Auth.: Ch. 165, 2001 OL

Stats. Implemented: Ch. 165, 2001 OL

Hist.: FCS 11-2001, f. & cert. ef. 12-27-01

**441-950-0020**

**Registry of International Trade Consultants**

(1) The Registry shall include the information required under Section ORS 705.730(3), and the following:

(a) The telephone number and e-mail address of the consultant;

(b) Names, addresses and telephone numbers of three references;

(c) Information about industry expertise and geographic specialization of the consultant.

(2) Information about each consultant contained in the Registry shall be based on data supplied by that consultant. The Director shall not in any manner be responsible for verifying the accuracy of the information provided by the consultant.

(3) Listing in the Registry shall not be implied to mean that the Director approves or endorses in any manner the consultants who are listed in the Registry.

Stat. Auth.: Ch. 165, 2001 OL

Stats. Implemented: Ch. 165, 2001 OL

Hist.: FCS 11-2001, f. & cert. ef. 12-27-01

**441-950-0030**

**Application for Listing**

(1) An applicant for listing in the Registry shall submit the following to the Director:

(a) A completed application in the form prescribed by the Director;

(b) A non-refundable application fee of \$100.

(2) The Director may reject an application for listing in the Registry for the following reasons:

(a) The application is not properly completed;

(b) The applicant furnishes false or misleading information to the Director;

(c) The applicant has within the five years preceding the date of the application been convicted of a felony or misdemeanor of which an essential element was fraud;

(d) The applicant, or the country of which the applicant is a citizen, is on the **United States Department of Treasury's Office of Foreign Assets Control listings** of individuals or countries that are prohibited from doing business with any United States entity or individual;

(e) The applicant has engaged in dishonest, fraudulent, or illegal practices;

(f) The applicant is not qualified to be an international trade consultant on the basis of factors such as training, experience and knowledge; or

(g) Listing in the Registry would, in the opinion of the Director, be detrimental to the interests of Oregon businesses or consumers.

(3) The Director shall notify the applicant of his/her decision with respect to approving or rejecting the application for listing within 30 days of the receipt of the application by the Director.

(4) Information about any consultant contained in the Registry shall be updated upon written notification to the Director of the changed information by the consultant.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: Ch. 165, 2001 OL

Stats. Implemented: Ch. 165, 2001 OL

Hist.: FCS 11-2001, f. & cert. ef. 12-27-01

**441-950-0040**

**Continuation of Listing**

(1) The listing in the Registry of each consultant shall expire on December 31st of the year following the year of initial listing unless renewed in accordance with this rule.

(2) To renew a listing in the Registry, the consultant must submit a non-refundable renewal fee of \$100 prior to the expiration of

the listing. Each renewal shall be effective for a two-year period ending on December 31st of the second year.

(3) Failure to submit the renewal fee shall result in the deletion of the consultant's name from the Registry. A consultant whose name is deleted from the Registry for failure to renew the listing may apply to be again listed in the Registry by submitting a new application for listing.

(4) The Director may extend the deadline for payment of the renewal fee.

Stat. Auth.: Ch. 165, 2001 OL

Stats. Implemented: Ch. 165, 2001 OL

Hist.: FCS 11-2001, f. & cert. ef. 12-27-01

**441-950-0050**



