



PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)
(Implements RCW 34.05.310)**

Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 28, 2025

TIME: 9:12 AM

WSR 25-10-022

Agency: Department of Financial Institutions, Securities Division

Subject of possible rule making: The Securities Division is soliciting comments on the possible repeal of WAC 460-42A-030 which exempts certain government issued or guaranteed securities from registration if they receive a high credit rating from Standard and Poor's Corporation, Moody's Investors Service, Inc., or Fitch Ratings, Inc.

Statutes authorizing the agency to adopt rules on this subject: RCW 21.20.310(1); 21.20.450.

Reasons why rules on this subject may be needed and what they might accomplish: The Securities Division is considering the possible repeal of WAC 460-42A-030 which exempts certain government issued or guaranteed securities from registration based on ratings from one of the following credit ratings agencies: Standard and Poor's Corporation, Moody's Investors Service, Inc., or Fitch Ratings, Inc.

RCW 21.20.310(1) exempts from securities registration "[a]ny security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing." This exemption does not apply, however to "any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsection (7) or (8) of this section." RCW 21.20.310(1) goes on to provide that "the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors." In that vein, WAC 460-42A-030 was adopted in 1989 to exempt from registration certain government issued securities that are payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the securities receive high ratings from one of the recognized credit rating organizations.

Since the adoption of WAC 460-42A-030, the National Securities Markets Improvement Act of 1996 ("NSMIA") was passed. Among other things, NSMIA preempts securities registration requirements under state law for "[a]ny security issued or guaranteed by the United States or any Territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or Territory, or by any public instrumentality of one or more States or Territories, or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing" except "with respect to the offer or sale of such security in the State in which the issuer of such security is located." See Section 18(b)(4)(E) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(E). Thus, unless such a government issued or guaranteed security is issued by an issuer located in the State of Washington, federal law preempts state registration requirements under the Securities Act of Washington, chapter 21.20 RCW. For those securities offerings for which preemption does not apply, RCW 21.20.310(1) provides an exemption unless the securities are payable solely from revenues to be received from a non-governmental industrial or commercial enterprise. WAC 460-42A-030 expands the exemption under RCW 21.20.310(1) on the basis of credit ratings. In addition, an offering of government issued or guaranteed securities may be made under other exemptions from registration, including federal Rule 506.

In response to the role of credit ratings in the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 mandated the removal of certain references to credit ratings in the regulations adopted by the U.S. Securities and Exchange Commission under the Securities Act of 1933, the Securities and Exchange Act of 1934, and the Investment Company Act of 1940. To increase uniformity with our federal counterpart, the Securities Division is now considering the repeal of WAC 460-42A-030. A repeal of WAC 460-42A-030 may offer greater protection to Washington investors by eliminating reliance on credit ratings as a substitute for regulatory review and registration with respect to municipal securities offerings payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: Federally, Section 3(a)(2) of the Securities Act of 1933 exempts most government issued or guaranteed-securities from registration. In addition, most, if not all states, have an exemption from registration for certain government issued or guaranteed securities.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) The Securities Division is soliciting comments from interested persons and will adopt rules only after considering public comments.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Nathan Quigley
Address: PO Box 41200, Olympia, WA 98504-1200
Phone: 360-902-8797
Fax: 360-902-0524
TTY: 360-664-8126
Email: Nathan.Quigley@dfi.wa.gov
Web site: <https://dfi.wa.gov/securities>
Other:

(If necessary)

Name:
Address:
Phone:
Fax:
TTY:
Email:
Web site:
Other:

Additional comments:

Date: April 23, 2025

Name: William M. Beatty

Title: Securities Administrator

Signature:

