



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Financial Institutions, Securities Division

<input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 09-12-094 ; or	<input checked="" type="checkbox"/> Original Notice
<input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____ ; or	<input type="checkbox"/> Supplemental Notice to WSR _____
<input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4).	<input type="checkbox"/> Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) The Securities Division is proposing to amend the rules set forth in chapter 460-33A WAC, which provide an optional method of registration for "mortgage paper securities" as defined in WAC 460-33A-015(4). The proposed rules would strengthen investor suitability requirements, revise the calculation of the number of investors that may participate in a loan, revise the net worth and bonding requirements to provide better investor protection, address recent concerns with respect to agreements with escrow agents who hold payments for the purchase of mortgage paper securities, establish requirements for servicing and participation agreements, clarify the fiduciary duties of a mortgage broker-dealer, clarify investors' rights to receive and access records and information concerning their investments, codify the requirement for including a disclaimer in advertisements of mortgage paper securities, clarify that mortgage broker-dealer and mortgage broker-dealer representatives may not renew expired licenses, and make other updates and changes.

<p>Hearing location(s):</p> <p>State of Washington Department of Financial Institutions 150 Israel Rd. SW, Room 319 Tumwater, Washington 98501</p> <p>Date: <u>March 23, 2010</u> Time: <u>2:00 p.m.</u></p>	<p>Submit written comments to:</p> <p>Name: <u>Faith L. Anderson, Associate General Counsel</u> Address: <u>Department of Financial Institutions – Securities Division;</u> <u>P.O. Box 9033; Olympia, WA 98507-9033</u> e-mail <u>faith.anderson@dfi.wa.gov</u> fax <u>(360)704-6480</u> by (date) <u>March 23, 2010</u></p> <p>Assistance for persons with disabilities: Contact <u>Carolyn Hawkey; P.O. Box 9033; Olympia, WA 98507-</u> <u>9033</u> by <u>March 17, 2010</u> TTY (360) <u>664-8126</u> or (360) <u>902-8824</u></p>
<p>Date of intended adoption: <u>March 24, 2010</u> (Note: This is NOT the effective date)</p>	

Purpose of the proposal and its anticipated effects, including any changes in existing rules: After several months of study, the Division is proposing to amend the rules in chapter 460-33A to address a variety of concerns that have surfaced during the course of routine examinations and the investigation of complaints received from investors who purchased mortgage paper securities. The proposals would:

- Revise the minimum financial thresholds for investors in mortgage paper securities set forth in WAC 460-33A-031;
- Revise the calculation of the number of investors that may participate in a loan;
- Remove the cap on the required amount of net worth and revise the required amount of the alternative surety bond so that it increases with the amount of mortgage paper securities offered;
- Require the escrow account agreement to provide that the escrow agent agrees to maintain its independence, that the account is subject to examination by the Division, and that funds belonging to the mortgage broker-dealer may not be commingled in the escrow account;
- Revise the servicing agreement requirements to clarify that a mortgage broker-dealer that provides loan servicing to investors owes them the duties of a fiduciary, to require annual approval of the servicing agreement by investors, to require mortgage broker-dealers to provide investors access to books and records concerning their investments (including a list of investors in a loan), to provide investors reports concerning loans in default or property they have acquired through foreclosure, and to clarify that a mortgage broker-dealer is not entitled to late fees on a loan that has been foreclosed;
- Establish the requirements for participation agreements including basic contents, actions that may not be taken by a mortgage broker-dealer, binding a mortgage broker-dealer to its terms to the extent the mortgage broker-dealer maintains an interest in a loan or property acquired through foreclosure, allowing investors to call meetings, prohibiting the distribution of any excess proceeds from the sale of foreclosed property to the mortgage broker-dealer, and prohibiting the payment of late fees to a mortgage broker-dealer on a loan that has been foreclosed;
- Express some of the fiduciary duties owed by a mortgage broker-dealer to investors in mortgage paper securities;
- Include some additional "dishonest and unethical practices" in WAC 460-33A-090;
- Express an investor's right to access the books and records of the mortgage broker-dealer that concern the investor's investments;
- Update and clarify the record-keeping requirements set forth in WAC 460-33A-115; and
- Make other clarifications and changes.

Reasons supporting proposal: The changes proposed should be adopted to better protect investors purchasing mortgage paper securities in registered public offerings. The Securities Division believes these changes are necessary in light of recent examinations and investigations.

Statutory authority for adoption: RCW 21.20.060, .070, .090, .100, .180, .210, .250, .270, and .450	Statute being implemented: RCW 21.20
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Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

DATE
February 10, 2010

NAME (type or print)
Scott Jarvis

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 10, 2010
TIME: 1:56 PM

WSR 10-05-048

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Financial Institutions

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Faith L. Anderson	150 Israel Road SW; Olympia, WA 98501	(360) 725-7825
Implementation..... Scott Jarvis	150 Israel Road SW; Olympia, WA 98501	(360) 902-8700
Enforcement..... Suzanne E. Sarason	150 Israel Road SW; Olympia, WA 98501	(360) 902-8760

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: The Department of Financial Institutions is not one of the agencies listed in RCW 34.05.328.