

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) Order Number S-11-0674-11-SC01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) STATEMENT OF CHARGES AND  
Andrew J. Eubanks; ) NOTICE OF INTENT TO ENTER ORDER  
Respondent ) TO CEASE AND DESIST, TO CHARGE  
) COSTS, AND TO IMPOSE A FINE  
)

THE STATE OF WASHINGTON TO: Andrew J. Eubanks

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondent Andrew J. Eubanks has violated the Securities Act of Washington and that his violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations and to charge costs, and under RCW 21.20.395 to impose a fine. The Securities Administrator finds as follows:

**TENTATIVE FINDINGS OF FACT**

Respondent

1. Andrew J. Eubanks ("Eubanks") was at all relevant times a resident of Washington.

Nature of the Offering

2. Between approximately 1991 and 2005, Eubanks raised approximately \$80,000 through the offer and sale of investments in purported investment funds to a senior citizen

STATEMENT OF CHARGES AND NOTICE OF INTENT TO ENTER ORDER TO CEASE AND DESIST, TO CHARGE COSTS, AND TO IMPOSE A FINE

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
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1 residing in Washington. Eubanks led the investor to believe that he had exclusive access to  
2 investment funds that had been started by Microsoft executives. Eubanks provided the  
3 investor with documents that referred to the investment funds as “Excel Subgroup 4.0  
4 Investment 3.3” and “Excel Subgroup 5.0 Investment 3.3.” Excel Subgroup 4.0 Investment  
5 3.3 was described as a “moderately aggressive fund” while Excel Subgroup 5.0 Investment 3.3  
6 was purportedly a “more aggressive” fund. Offering documents represented that the funds  
7 purportedly owned a large volume of Microsoft stock, and also invested in mutual funds and  
8 bonds issued by well-known public companies such as Boeing and Proctor & Gamble.

9  
10 3. Between approximately 1991 and 2001, the Washington resident made over 20  
11 investments with Eubanks. Eubanks claimed that only he could buy into the funds and that the  
12 investment account was in his name. Following Eubanks’ instructions, the investor wrote  
13 checks made payable to Eubanks. Eubanks typically provided the investor with a “Deposit  
14 Invoice” that showed the amount of the investment and an account number. In 2005, Eubanks  
15 directed the investor to pay him \$1,295.72 as a purported “corporate administration fee.”

16 4. Eubanks regularly provided the investor with account statements showing that  
17 the investment funds were purportedly earning large returns of as much as 30% to 52% per  
18 year. The account statements claimed that the investment funds outperformed leading indexes,  
19 such as the S&P 500. For example, an account statement from December 1992 stated: “We did  
20 beat the S&P 500 by over 300%, while maintaining a safe investment environment.” Similarly,  
21 an account statement from September 1995 stated: “Over the last year our returns have been  
22 three times that of the S&P 500 and twice that of the average mutual fund.”  
23

1           5.       The account statements often referred to purported investment deadlines, which  
2 created a false sense of urgency and induced the investor to make additional investments with  
3 Eubanks. For example, one account statement represented: “Due to the incredible success of  
4 these funds we are again reaching the maximum total investment as set by [the] Securities and  
5 Exchange Commission. Because of this limit we will be allowing deposits for seven days  
6 only.” Another account statement represented: “We are rapidly approaching the SEC limit for  
7 our fund type, when this limit is reached the funds will be closed for about a year. We expect  
8 that to happen on this cycle, so this will probably be the last opportunity to increase your  
9 investment for some time.”  
10

11           6.       Eubanks provided the investor with quarterly and annual statements that listed  
12 the investor’s purported account balance, which grew steadily over time. In 2005, Eubanks  
13 provided an account statement that indicated the investor’s account had grown to over  
14 \$600,000. In 2007, Eubanks provided an account statement showing that the investor’s  
15 account had grown to more than \$725,000.  
16

17           7.       In 2007, the investor contacted Eubanks regarding withdrawing funds from his  
18 account. Eubanks came to investor’s home and provided the investor with a withdrawal form,  
19 which the investor filled out and returned to Eubanks. Between approximately 2008 and 2009,  
20 Eubanks made lulling statements to the investor and provided various excuses for  
21 nonpayment. For example, Eubanks told the investor that his funds were in the Cayman  
22 Islands and that there were problems in getting the funds back to the United States due to a  
23  
24

1 hurricane. Eubanks blamed other delays on other third parties. Eubanks eventually stopped  
2 returning the investor's phone calls and did not repay the investor.

3 8. The Securities Division has been unable to confirm the existence of any  
4 investment fund bearing the name "Excel Subgroup 4.0 Investment 3.3" or "Excel Subgroup  
5 5.0 Investment 3.3."

6 Misrepresentation and Omissions

7  
8 9. In the offer and sale of the investments described above, Eubanks failed to  
9 disclose material information regarding the investments, including, but not limited to, the  
10 identity and background of the persons managing the investment funds; and the fees and other  
11 compensation paid to fund managers; and Eubanks' prior investment experience and track  
12 record. Eubanks misrepresented the risks of investing in the Excel Subgroup 4.0 Investment  
13 3.3 fund, stating that it provided "consistently high returns" with "minimal risk" when in fact,  
14 it involved the significant risk of a total loss.

15 Registration Status

16 10. Andrew J. Eubanks is not currently registered as a securities salesperson or  
17 broker-dealer in the State of Washington and has not previously been so registered.

18 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

19 **CONCLUSIONS OF LAW**

20  
21 1. The offer or sale of the investments described above constitutes the offer or sale  
22 of a security as defined in RCW 21.20.005(14) and (17).

1           2.       Respondent Andrew J. Eubanks has violated RCW 21.20.140, the securities  
2 registration provision of the Securities Act of Washington, by offering or selling said securities  
3 while no registration for such offer or sale was on file with the Division.

4           3.       Respondent Andrew J. Eubanks has violated RCW 21.20.040 by offering or  
5 selling said securities while not registered as a securities salesperson or broker-dealer in the  
6 State of Washington.

7           4.       Respondent Andrew J. Eubanks has violated RCW 21.20.010, the anti-fraud  
8 provision of the Securities Act, because, as set forth in the Tentative Findings of Fact, he made  
9 misstatements of material facts or omitted to state material facts necessary in order to make the  
10 statements made, in light of circumstances under which they were made, not misleading.

11           **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

12           Pursuant to RCW 21.20.390(1), and based on the above Tentative Findings of Fact and  
13 Conclusions of Law, the Securities Administrator intends to order that Andrew J. Eubanks, and  
14 his agents and employees, each cease and desist from violations of RCW 21.20.140, RCW  
15 21.20.040, and RCW 21.20.010.  
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17                           **NOTICE OF INTENT TO IMPOSE A FINE**

18           Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and  
19 Conclusions of Law, the Securities Administrator intends to order that Respondent Andrew J.  
20 Eubanks shall be liable for and shall pay a fine of \$10,000.  
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22                           **NOTICE OF INTENT TO CHARGE COSTS**

1 Pursuant to RCW 21.20.390(5), and based upon the Tentative Finds of Fact and  
2 Conclusions of Law, the Securities Administrator intends to order that the Respondent Andrew  
3 J. Eubanks shall be liable for and pay the Securities Division the costs, fees, and other expenses  
4 incurred in the conduct of the administrative investigation and hearing of this matter of not less  
5 than \$1,000.

6 **AUTHORITY AND PROCEDURE**

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8 This Statement of Charges is entered pursuant to the provisions of chapter 21.20 RCW  
9 and is subject to the provisions of RCW 34.05. The Respondent may make a written request for  
10 a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
11 OPPORTUNITY FOR HEARING accompanying this order.

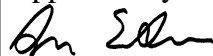
12 If a Respondent does not request a hearing, the Securities Administrator intends to adopt  
13 the above Tentative Findings of Fact and Conclusions of Law as final and enter an order to  
14 cease and desist permanent as to that Respondent, and impose the fines and costs sought.

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16 Dated and Entered this 25th day of April, 2012.

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19 WILLIAM M. BEATTY  
20 Securities Administrator

21 Approved by:

22 

23 Suzanne E. Sarason  
24 Chief of Enforcement

Presented by:

25 

Robert Kondrat  
Enforcement Attorney

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