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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation of the
Securities Act of Washington by:

XANADU, INC,

Respondent.

Order Number: S-11-0818-11-TO01

SUMMARY ORDER DENYING
EXEMPTION AND STATEMENT OF
CHARGES AND NOTICE OF INTENT TO
ENTER AN ORDER TO CEASE AND
DESIST AND TO REVOKE EXEMPTIONS

THE STATE OF WASHINGTON TO:

Xanadu, Inc.

SUMMARY ORDER DENYING EXEMPTION AND STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington enters a Summary Order against Xanadu, Inc. under RCW 21.20.325 denying the exemption set forth in RCW 21.20.320(16).

Furthermore, the Securities Administrator of the State of Washington has reason to believe that

Respondent Xanadu, Inc. has violated the Securities Act of Washington and that its violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from violating RCW 21.20.010; and under RCW 21.20.325 to revoke the ability of Xanadu, Inc. to rely on the exemptions from registration provided by RCW 21.20.320(1), (9), (16), and (17). The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondent

1. Xanadu, Inc. ("Xanadu") is a Washington corporation that was formed on September 6, 2011. Xanadu's principal place of business is located at 2620 Bellevue Way NE #122, Bellevue, Washington 98004. Xanadu was purportedly formed to build a private vacation club.

SUMMARY ORDER DENYING EXEMPTION AND
STATEMENT OF CHARGES AND NOTICE OF INTENT TO
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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

Exemption Filing in Washington

2. On September 29, 2011, Xanadu filed with the Securities Division a Notification of Claim Exemption pursuant to RCW 21.20.320(16)(a)(ii) for transactions by a mutual or cooperative association that involve advertising or public solicitation. The exemption under RCW 21.20.320(16)(a)(ii) may only be relied upon if the mutual or cooperative association first files a notice to claim the exemption and the Securities Administrator does not enter an order to deny the exemption within the next ten full business days.

3. In its Notification of Claim Exemption filing, Xanadu represented to the Securities Division that pursuant to RCW 21.20.320(16)(b)(i), its securities:

- a. Qualify a holder to be a member or patron of the association;
- b. Represent a contribution of capital to the association by persons who are or intend to become members or patrons of the association;
- c. Represent a patronage dividend or other patronage allocation; or
- d. Represent the terms or conditions by which members or patrons purchase, sell, or market products, commodities, or services from, to, or through the association.

4. Xanadu further represented in its exemption filing that its securities “are nontransferable except in the case of death; operation of law; bona fide transfer for security purposes to the association, a bank, or transfer to an existing member or person who will become a member and, in the case of an instrument, that said restriction is conspicuously stated on its face.”

5. According to the exemption filing, Xanadu intends to offer 7,050 “Ownership/Membership Common Stock Shares” at \$2,000 per share.

6. Xanadu maintains a website located at <http://usafund1inc.com/wwwroot/DocsXanadu.php> on which it has posted documents concerning the offering of Xanadu common stock. These documents include the Private Placement Memorandum, titled on the website as “Xanadu REG D 506 Offering Circular,” a Subscription Agreement, an Investor Questionnaire, formation documents for the corporation, and

1 information concerning the purchase of club memberships. The website also contains a “Frequently Asked
2 Questions” page and an “About Us” page promoting memberships in the club.

3 7. The Private Placement Memorandum (“PPM”) available on Xanadu’s website represents
4 that the common stock shares are offered “to secure a reservation to buy a membership in a private
5 fractional club known as Xanadu, Inc.” The PPM further states that “as these shares are not for profit
6 shares there is no plan to ever pay a dividend on the shares” and represents that “The Company is not
7 structured as a for profit entity.” However, according to filings made with the Washington Secretary of
8 State, Xanadu is organized as a for-profit corporation under RCW 23B, rather than as a cooperative
9 association under RCW 23.86. Further, the PPM indicates that the company was “formed for any legal
10 business” and that “there are other possible business opportunities available to the company” besides
11 building a vacation club, including “wind energy production” and “geothermal energy.” These
12 representations do not appear to be consistent with Xanadu acting as a mutual or cooperative association
13 which would qualify for the exemption under RCW 21.20.320(16).

14 8. The PPM represents that Xanadu “is considering the registration of the Shares under the
15 Securities Act once the offering is closed. Therefore, the Shares could be resold.” The “Individual
16 Membership Document” located on Xanadu’s website states more equivocally, “The club membership
17 will be publically registered after the memberships are sold making resale of your membership easier
18 than other clubs.” Elsewhere, the PPM indicates that there are restrictions on the transferability of
19 shares, but states that this restriction means only that “Shares may not be sold to another investor who is
20 not an Accredited Investor.” These representations are not consistent with the exemption filing in which
21 Xanadu represented that the shares would be nontransferable in accordance with
22 RCW 21.20.320(16)(b)(ii).

1 9. Based on a review of the offering documents available on its website, Xanadu does not
2 satisfy the requirements of the exemption under RCW 21.20.320(16) for transactions by a mutual or
3 cooperative association.

4 Offering Documents

5 10. The offering documents posted on Xanadu's website constitute the offer of securities. The
6 offering documents for Xanadu fail to disclose all material information necessary for potential investors to
7 evaluate the terms of the offering of Xanadu shares.

8 11. The Private Placement Memorandum ("PPM") states that Xanadu seeks to sell \$14,100,000 in
9 common stock with a "minimum proceeds" amount of \$4,000,000. The minimum purchase amount for the
10 common stock is \$2,000 for businesses and \$6,000 for individuals.

11 12. According to the PPM, the shares "secure a reservation to buy a membership in a private
12 fractional club known as Xanadu, Inc." According to the PPM, "There is not a company of the scope or
13 quality of Xanadu that has been designed to service the wealthy individual markets, and provide a
14 business club never before conceived for the business community. Business entities can now conduct
15 their business in Five Star fashions without drawing the condemnation of stockholders of their company
16 or the government." The PPM states that "the company has developed a very complete plan to develop
17 the club. Over \$1,000,000 dollars has been spent on architectural designs, property escrows for the
18 purpose of core samples and site planning." However, the PPM does not provide specific details about
19 the club, such as where it is located, how long it will take to build, the total cost of construction, or how the
20 club will be financed. The PPM does not explain how Xanadu obtained the \$1,000,000 it spent on the
21 development of the club.

1 13. The PPM fails to provide information on how the memberships in the club operate and how a
2 purchase of common stock to reserve membership relates to the ultimate purchase of a club membership.
3 The documents in the Membership Reservation section of Xanadu’s website indicate that memberships are
4 purchased in units representing annual weeks of club usage, with memberships being sold in units costing
5 between \$9,900,000 and \$20,000,000 each. The website represents that the purchase deposit for these
6 memberships ranges from \$99,000 to \$200,000, which is far in excess of the minimum investment amount
7 for purchase of the common stock which purportedly reserves memberships.

8 14. The documents in the Membership Reservation section of Xanadu’s website further state that
9 the membership fee is a “ONE TIME membership fee” and “There are no monthly dues EVER in your
10 club.” The club promises to provide amenities to its members such as 16,000 square foot homes, jets,
11 yachts, submarines, and limousines. Xanadu offers members the option of financing their membership fee
12 with a five year promissory note at 8% interest. In addition, Xanadu’s website represents that the
13 membership fee will be repaid in 20 years. There is no disclosure regarding how Xanadu, as a newly
14 formed company, can finance membership fees. There is also no disclosure regarding how the club will
15 generate the funds to repay membership fees in 20 years.

16 15. The PPM lists the founders’ and affiliated shareholders’ capital contributions as
17 “undetermined” and total sources of capital as “undetermined.” No financial statements are provided on the
18 website or as part of the PPM.

19 16. The PPM fails to provide a detailed use of proceeds for the proposed offering, and fails to
20 indicate what could be accomplished if only the minimum proceeds are raised.

21 17. The Subscription Agreement for the offering states that investors must be both accredited
22 investors and qualified clients; however, the PPM only limits the offering to accredited investors and

1 uses a definition of accredited investor that has become outdated due to changes in the law. The
2 Subscription Agreement further states that it is a subscription for the purchase of “20 Year Preferred
3 Stock”, even though the PPM states that the offering is for common stock.

4 Regulation D Exemption Filing with SEC

5 18. On September 14, 2011, Xanadu filed a Notice of Exempt Offering of Securities (“Form
6 D”) with the U.S. Securities & Exchange Commission claiming an exemption pursuant to Rule 506 of
7 Regulation D. Regulation D restricts issuers and any persons working on an issuer’s behalf from
8 offering or selling securities by any form of general solicitation or general advertising when conducting
9 offerings in reliance on the exemptions promulgated under Regulation D. The posting of Xanadu’s
10 offering materials on an unrestricted website does not comply with the prohibition on general solicitation
11 and advertising for offerings made in reliance on Regulation D Rule 506.

12
13 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

14 **CONCLUSIONS OF LAW**

15 1. The offer or sale of the investments described above constitutes the offer or sale of a
16 security as defined in RCW 21.20.005(10) and (12).

17 2. Xanadu, Inc. failed to demonstrate that it satisfies the exemption for transactions by a
18 mutual or cooperative association pursuant to RCW 21.20.320(16) because the securities in its offering
19 are not membership interests in a mutual or cooperative association. In addition, the securities are
20 anticipated to be transferrable in the future.

1 **AUTHORITY AND PROCEDURE**

2 This SUMMARY ORDER DENYING EXEMPTION is entered pursuant to the provisions of
3 RCW 21.20.325 and is subject to the provisions of RCW 34.05. This STATEMENT OF CHARGES is
4 entered pursuant to the provisions of RCW 21.20.325 and RCW 21.20.390 and is subject to the provisions
5 of RCW 34.05. The Respondent may make a written request for a hearing as set forth in the NOTICE
6 OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order.
7 If a Respondent does not request a hearing, the SUMMARY ORDER DENYING EXEMPTION will
8 become final. Furthermore, if the Respondent does not request a hearing, the Securities Administrator
9 intends to adopt the foregoing Tentative Findings of Fact and Conclusions of Law as final, and enter a
10 permanent order against Xanadu, Inc. to cease and desist and to revoke its ability to use exemptions from
11 registration in RCW 21.20.320(1), (9), (16) and (17).

12 DATED this 13th day of October, 2011.

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15
16 WILLIAM M. BEATTY
17 Securities Administrator

18 Approved by:

19 

20 Faith L. Anderson
21 Chief of Registration

Presented by:

22 

23 Jill M. Vallely
24 Staff Attorney