

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**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-11-0818-13-FO01

FINAL ORDER TO CEASE AND DESIST,
DENYING EXEMPTION, AND REVOKING
EXEMPTIONS

THE STATE OF WASHINGTON TO:

Xanadu, Inc.

INTRODUCTION

On October 13, 2011, the Securities Administrator of the State of Washington issued a Summary Order Denying Exemption and Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist and to Revoke Exemptions (“Summary Order”), Order Number S-11-0818-11-TO01 against Xanadu, Inc. The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for Hearing (“Notice”) and an Application for Adjudicative Hearing (“Application for Adjudicative Hearing”) were served on Xanadu, Inc. On or about October 28, 2011, Respondent Xanadu, Inc. returned the Application for Adjudicative Hearing and requested an administrative hearing. On December 3, 2013, Respondent Xanadu, Inc. withdrew its request for an administrative hearing.

The Securities Administrator therefore will adopt as final the Findings of Fact and Conclusions of Law as set forth in the Summary Order and enter a final order against Respondent Xanadu, Inc. to cease and desist from violating RCW 21.20.010, denying the exemption set forth in RCW 21.20.320(16), and revoking 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:

1 **FINDINGS OF FACT**

2 Respondent

3 1. Xanadu, Inc. (“Xanadu”) is a Washington corporation that was formed on September 6,
4 2011. Xanadu’s principal place of business is located at 2620 Bellevue Way NE #122, Bellevue,
5 Washington 98004. Xanadu was purportedly formed to build a private vacation club.

6 Exemption Filing in Washington

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

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

- 15 a. Qualify a holder to be a member or patron of the association;
- 16 b. Represent a contribution of capital to the association by persons who are or intend to
become members or patrons of the association;
- 17 c. Represent a patronage dividend or other patronage allocation; or
- 18 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.

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

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

3 6. Xanadu maintains a website located at <http://usafund1inc.com/wwwroot/DocsXanadu.php> on
4 which it has posted documents concerning the offering of Xanadu common stock. These documents include
5 the Private Placement Memorandum, titled on the website as “Xanadu REG D 506 Offering Circular,” a
6 Subscription Agreement, an Investor Questionnaire, formation documents for the corporation, and
7 information concerning the purchase of club memberships. The website also contains a “Frequently Asked
8 Questions” page and an “About Us” page promoting memberships in the club.

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

20 8. The PPM represents that Xanadu “is considering the registration of the Shares under the
21 Securities Act once the offering is closed. Therefore, the Shares could be resold.” The “Individual
22 Membership Document” located on Xanadu’s website states more equivocally, “The club membership

1 will be publically registered after the memberships are sold making resale of your membership easier
2 than other clubs.” Elsewhere, the PPM indicates that there are restrictions on the transferability of
3 shares, but states that this restriction means only that “Shares may not be sold to another investor who is
4 not an Accredited Investor.” These representations are not consistent with the exemption filing in which
5 Xanadu represented that the shares would be nontransferable in accordance with
6 RCW 21.20.320(16)(b)(ii).

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

10 Offering Documents

11 10. The offering documents posted on Xanadu’s website constitute the offer of securities. The
12 offering documents for Xanadu fail to disclose all material information necessary for potential investors to
13 evaluate the terms of the offering of Xanadu shares.

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

17 12. According to the PPM, the shares “secure a reservation to buy a membership in a private
18 fractional club known as Xanadu, Inc.” According to the PPM, “There is not a company of the scope or
19 quality of Xanadu that has been designed to service the wealthy individual markets, and provide a
20 business club never before conceived for the business community. Business entities can now conduct
21 their business in Five Star fashions without drawing the condemnation of stockholders of their company
22 or the government.” The PPM states that “the company has developed a very complete plan to develop

1 the club. Over \$1,000,000 dollars has been spent on architectural designs, property escrows for the
2 purpose of core samples and site planning.” However, the PPM does not provide specific details about
3 the club, such as where it is located, how long it will take to build, the total cost of construction, or how the
4 club will be financed. The PPM does not explain how Xanadu obtained the \$1,000,000 it spent on the
5 development of the club.

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

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

1 15. The PPM lists the founders' and affiliated shareholders' capital contributions as
2 "undetermined" and total sources of capital as "undetermined." No financial statements are provided on the
3 website or as part of the PPM.

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

6 17. The Subscription Agreement for the offering states that investors must be both accredited
7 investors and qualified clients; however, the PPM only limits the offering to accredited investors and
8 uses a definition of accredited investor that has become outdated due to changes in the law. The
9 Subscription Agreement further states that it is a subscription for the purchase of "20 Year Preferred
10 Stock", even though the PPM states that the offering is for common stock.

11 Regulation D Exemption Filing with SEC

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

19
20 Based upon the above Findings of Fact, the following Conclusions of Law are made:
21
22

1 **CONCLUSIONS OF LAW**

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

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

8 3. The offering documents posted on Xanadu’s website contain misstatements or omissions of
9 material information necessary to make the statements made not misleading, in violation of RCW
10 21.20.010, which justifies the entry of an order to revoke exemptions pursuant to RCW 21.20.325.

11 **FINAL ORDER**

12 Based upon the foregoing and finding it in the public interest:

13 It is hereby ORDERED that Respondent Xanadu, Inc.’s application for the exemption set forth in
14 RCW 21.20.320(16) is denied.

15 It is further ORDERED that the exemptions from registration in RCW 21.20.320(1), (9), (16) and
16 (17) are revoked with respect to securities offered or sold by Xanadu, Inc.

17 It is further ORDERED that Xanadu, Inc. shall cease and desist from violations of RCW 21.20.010.

18 **AUTHORITY AND PROCEDURE**

19 This Final Order is entered pursuant to the provisions of RCW 21.20.325 and RCW 21.20.390 and
20 is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. The Respondent has the right
21 to petition the superior court for judicial review of this agency action under the provisions of chapter
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

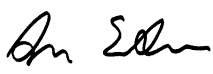
WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Dated and Entered this 12th day of December, 2013.



WILLIAM M. BEATTY
Securities Administrator

Approved by:



Suzanne E. Sarason
Chief of Enforcement

Presented by:



Robert Kondrat
Financial Legal Examiner Supervisor