

SECURITIES ACT POLICY STATEMENT - 16

RE: SECURITIES OFFERINGS ON THE INTERNET

Question presented:

Is an issuer permitted to make the offer and sale of unregistered securities in this state via the Internet?

Discussion:

NASAA Resolution

The North American Securities Administrators Association (NASAA) adopted, effective January 7, 1996, a resolution that encourages states to take appropriate steps to exempt from securities registration offers of securities over the Internet (Internet Offers). (See NASAA Reports ¶ 7,040)

Analysis

As pointed out in the NASAA resolution, the Internet is essentially a broad-based electronic communications system. For state securities regulators, the issues presented by such a system are not dissimilar to those inherent in other methods of communication that cross state boundaries. Advertisements for securities offerings not registered in the State of Washington frequently appear in national publications such as the Wall Street Journal. The Division typically takes no action with respect to these advertisements so long as the offering is registered in this state or the advertisement indicates, directly or indirectly, that the offering is not available to Washington residents. The resolution adopted by NASAA is consistent with this approach.

Conclusion:

Following the approach of the NASAA resolution, the Administrator will take no action to enforce the securities registration provisions of the Washington Securities Act, Ch. 21.20 RCW, in connection with an offering on the Internet where:

- a. The offer is made while the offering is registered in Washington or is made pursuant to an available and perfected exemption from such registration; or
- b. The Internet Offer:
- c. (1) Indicates, directly or indirectly, that the securities are not being offered to the residents of Washington; and
- d. (2) Is not otherwise specifically directed to any person in this state by, or on behalf of, the issuer of securities.

No sales of securities shall be made in the State of Washington pursuant to an offering on the Internet until the offering has been registered and declared effective and the final prospectus or offering circular has been delivered to the investor prior to such sale; or the sale is exempt from registration under the Securities Act of Washington.

Issuers are cautioned that this position pertains only to securities registration issues. Internet offerings are still subject to the anti-fraud and other sections of the Securities Act. Any offering involving material misstatement of facts or fraud is subject to regulatory enforcement action by the Division.

Adopted: May 23, 1996

Deborah R. Bortner, Securities Administrator

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