

SECURITIES ACT POLICY STATEMENT - 20

RE: INTERNET ADVERTISING BY BROKER-DEALERS, INVESTMENT ADVISERS, AND THEIR REPRESENTATIVES

Question presented:

Is a broker-dealer, investment adviser, securities salesperson, or investment adviser representative "transacting business in this state" by disseminating general information over the Internet that is available to residents of this state?

Statute:

RCW 21.20.040 states that "it is unlawful for any person to transact business in this state" as a broker-dealer, salesperson, investment adviser, or investment adviser representative unless he or she is registered under this chapter.

Discussion:

The Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, and their agents and representatives to advertise and otherwise disseminate information on products and services to prospective customers and clients. Certain communications made on the Internet are directed generally to anyone, including residents of this state, having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications").

Conclusion:

Broker-dealers, investment advisers, and their representatives who use the Internet to distribute information on available products and services through communications directed generally to anyone having access to the Internet shall not be deemed to be "transacting business" in this state for purposes of RCW 21.20.040, based solely on that fact, if the following conditions are observed:

A. The Internet Communication contains a legend which clearly states that:

(1) the broker-dealer, investment adviser, salesperson or representative in question may not transact business in Washington unless appropriately registered, or excluded or exempted from such registration; and

(2) follow-up, individualized responses to persons in this state by such persons that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, will not be made absent compliance with the appropriate registration requirements, or an applicable exemption or exclusion;

B. The Internet Communication contains a mechanism including, without limitation, technical "firewalls" or other implemented policies and procedures, designed to reasonably ensure that prior to any direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, salesperson, or representative is first registered in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this paragraph shall be construed to relieve a state registered broker-dealer, investment adviser, BD agent or representative from any applicable securities registration requirement in this state;

C. The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation in this state, but is limited to the dissemination of general information on products and services; and

D. In the case of a securities salesperson or investment adviser representative:

(1) the name of the broker-dealer or investment adviser with whom the salesperson or representative is affiliated is prominently disclosed within the Internet Communication;

(2) the broker-dealer or investment adviser with whom the salesperson or representative is associated is responsible for reviewing and approving the content of any Internet Communication ;

(3) the broker-dealer or investment adviser with whom the salesperson or representative is associated first authorizes the Internet Communication; and

(4) in disseminating information through the Internet Communication, the salesperson or representative acts within the scope of the authority granted by the broker-dealer or investment adviser.

The position expressed in this Policy extends to state broker-dealer, investment adviser, salesperson and representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

Nothing in this Policy shall be construed to affect the activities of any broker-dealer, investment adviser, salesperson, or representative that is not subject to the jurisdiction of the Administrator as a result of the National Securities Markets Improvements Act of 1996, as amended.

Adopted: September 8, 1997

Deborah R. Bortner, Securities Administrator

Prepared by: William M. Beatty, Senior Securities Examiner