



STATE OF WASHINGTON  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**

SECURITIES DIVISION

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## Securities Act Policy Statement Regarding Oversales by Investment Companies

### Question Presented:

What are the consequences if an investment company sells more securities in Washington than it has notice filed with the Securities Division on Form NF?

### Statute and Rules:

Pursuant to RCW 21.20.327(1), investment companies offering securities in Washington must notice file with the Securities Division. As specified in WAC 460-18A-010 and WAC 460-18A-020, prior to selling securities in Washington, investment companies must file Form NF with the Securities Division and pay a fee calculated based on the amount of securities to be sold in the state. To increase the amount of securities to be offered and sold in the state, an investment company must file an amendment and pay a fee for the additional amount of securities to be offered prior to the sale of securities to be covered by the fee.

### Discussion:

When an investment company sells more securities in Washington than it has notice filed on Form NF, the Securities Division considers this an “oversale” which violates RCW 21.20.327 and RCW 21.20.340(2)(b) and (3)(b). Pursuant to RCW 21.20.390, the Securities Division may issue enforcement actions for violations of the Securities Act of Washington. The Securities Division, however, finds that alternative resolutions to investment company oversales may be appropriate based on the facts and circumstances.

Investment companies may follow the procedure described below to resolve oversales:

1. Prior to filing an amended Form NF, the investment company should contact the Securities Division to inform the Division of the amount of the oversale.

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2. The investment company should provide the Securities Division with a written statement explaining why the oversale occurred and describing any steps the investment company has taken to avoid future oversales.
3. The investment company should propose a resolution to the oversale and receive approval from the Securities Division. Possible resolutions may be to conduct a rescission offer (which must be passed upon by the Securities Division under RCW 21.20.430(4)(b)), to enter into a Consent Order with the Securities Division, or to pay a penalty fee equal to twice the amount of the fee for the amount oversold. The Securities Division will consider other proposed resolutions on a case by case basis.
4. The investment company should file an amended Form NF and pay the associated fee to increase the offering amount to cover the amount of the oversale and any additional securities the investment company intends to offer and sell in Washington.

This Policy Statement does not limit the Securities Division's ability to issue an enforcement action with respect to an investment company oversale if the Securities Administrator finds such action to be warranted. Further, this Policy Statement pertains only to enforcement actions with respect to notice filings by investment companies and does not address other legal matters.

Adopted: January 7, 2014

William M. Beatty  
Securities Administrator

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