

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) Order Number S-05-026-05-SC01  
Whether there has been a violation of the )  
Securities Act of Washington by: ) **AMENDED** STATEMENT OF CHARGES,  
 ) SUMMARY ORDER REVOKING  
InterBay Funding Group Inc., Donald J. ) EXEMPTIONS, AND NOTICE OF INTENT  
Vanhook, and Jeanne Vanhook, ) TO ENTER STOP ORDER AND ORDER TO  
 ) CEASE AND DESIST, TO FILE  
Respondents. ) QUARTERLY FINANCIAL REPORTS AND  
 ) TO MAINTAIN MINIMUM NET WORTH

THE STATE OF WASHINGTON TO: InterBay Funding Group Inc., Donald J.  
Vanhook, and Jeanne Vanhook  
2031 196<sup>th</sup> Street SW, Suite B-202  
Lynnwood, WA 98036

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondents, InterBay Funding Group Inc., Donald J. Vanhook, and Jeanne Vanhook, have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.325, RCW 21.20.280, RCW 21.20.390, and RCW 21.20.732 to revoke securities registration exemptions, to deny securities registration, and to cease and desist from such violations. Pursuant to RCW 21.20.390 and RCW 21.20.700, the Securities Administrator intends to order that Respondents shall file quarterly financial reports and maintain the minimum net worth specified in RCW 21.20.710. The Securities Administrator finds that delay in revoking Respondents' securities registration exemptions would be hazardous to the investors and to the public and that a

1 summary order revoking exemptions should be entered immediately. The Securities  
2 Administrator finds as follows:

3 **TENTATIVE FINDINGS OF FACT**

4 **RESPONDENTS**

5 1. InterBay Funding Group Inc. (InterBay) is a Washington corporation with its principal  
6 place of business at 2031 196<sup>th</sup> Street SW, Suite B-202, Lynnwood, Washington 98036.

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8 2. InterBay is a “debenture company” under RCW 21.20.705 and from May 2000 until  
9 October 15, 2004, operated as such under permit number 70010450. InterBay had applied to  
10 renew its securities registration, but as of March 24, 2005, InterBay withdrew its application for  
11 securities registration.

12 3. Donald and Jeanne Vanhook own InterBay and serve as its President and Secretary,  
13 respectively.

14 **BACKGROUND**

15 4. InterBay is in the business of purchasing secured automobile loans from automobile  
16 dealers and also originating secured automobile loans directly to borrowers. To finance these  
17 business operations, InterBay sold unsecured Investment Notes (Notes) to investors. Generally,  
18 the Notes promise a fixed rate of return and a 1– to 5-year maturity date.

19  
20 5. Generally, RCW 21.20.705 defines a “debenture company” to include an issuer of any  
21 note, debenture, or other debt obligation who will use the proceeds from the offering as capital  
22 or operating funds to engage in the business of investing, reinvesting, owning, holding, or  
23 trading in notes, debt obligations, vendors’ interests in real estate contracts, real or personal  
24 property to be leased to third parties, or real or personal property. In addition to the other  
25 sections of the Securities Act of Washington, chapter 21.20 RCW, a debenture company must

1 comply with several special rules established in RCW 21.20.705-.855, which includes  
2 maintaining a minimum net worth established according to a formula that traces outstanding  
3 securities other than capital stock. Generally, the issuer must have a net worth of \$200,000 for  
4 its first \$1,000,000 of such outstanding securities plus, for any such securities in excess of  
5 \$1,000,000 but not more than \$100,000,000, additional net worth of 10% of that amount.

6  
7 6. Generally, under WAC 460-16A-200 an issuer of debt securities must have a  
8 reasonable ability to service the debt, which among other things requires the issuer to  
9 demonstrate a pro forma earnings-to-fixed-charges (EFC) ratio of 1 to 1 or greater.

10 7. InterBay was the subject of a prior Securities Division order dated February 25, 1998.  
11 In that order, InterBay and Donald Vanhook resolved with the Division allegations that they  
12 had offered or sold securities in Washington without registering the securities, RCW 21.20.140;  
13 without registering as a salesperson or broker-dealer, RCW 21.20.040; and without providing  
14 proper disclosure to investors, RCW 21.20.010. InterBay and Donald J. Vanhook agreed to  
15 cease and desist from future violations and to a two-year revocation of the registration  
16 exemptions granted in RCW 21.20.320(1), (5), and (11).

17 8. InterBay's past permits to sell securities in Washington were conditioned on filing  
18 quarterly and monthly reports with the Division since at least August 18, 2003. Monthly  
19 reports were due within 20 days of the end of the applicable month and quarterly reports were  
20 due within 30 days of the end of the applicable quarter. Among other items, the reports  
21 required InterBay to state its outstanding Notes, net worth, earnings and fixed charges. The  
22 monthly report also required InterBay to list its capital excess or shortage under RCW  
23 21.20.710 and its EFC ratio. From the quarterly reports, the Division could calculate the  
24 capital excess or shortage and EFC ratio based on the financial information InterBay provided.  
25

NATURE OF THE CONDUCT

9. InterBay has filed monthly reports that show the following information:

<b>Date covered</b>	<b>Date filed</b>	<b>Outstanding Notes</b>	<b>Net worth</b>	<b>Capital Excess (shortage)</b>	<b>EFC ratio</b>
Mar. '04	4/20/04	\$4,274,136	\$653,868	\$126,455	1.67
Apr. '04	5/21/04	4,374,296	691,144	153,715	1.31
May '04	11/24/04	4,465,935	643,977	97,384	1.15
Jun. '04	7/21/04	4,526,648	671,421	118,756	1.21
Jul. '04	11/24/04	4,547,781	560,553	5,775	0.86
Aug. '04	11/24/04	4,612,584	489,064	(72,204)	0.73
Sep. '04	<i>Not filed</i>	--	--	--	--
Oct. '04	1/17/05	4,662,097	245,666	(319,543)	0.52
Nov. '04	12/20/04	4,684,239	228,146	(340,278)	0.50
Dec. '04	1/21/05	4,701,706	279,025	(291,145)	0.63

On November 24, 2004, InterBay amended its June 2004 monthly report to decrease its net worth to \$465,641, indicate a capital shortage of (\$87,024), and lower its EFC ratio to 0.50.

10. InterBay has filed quarterly reports that show the following information:

<b>Date covered</b>	<b>Date filed</b>	<b>Outstanding Notes</b>	<b>Net worth</b>	<b>Capital Excess (shortage)</b>	<b>EFC ratio</b>
Jan.-Mar. '04	7/2/04	\$4,269,307	\$472,022	\$(54,909)	0.83
Apr.-Jun. '04	9/8/04	4,526,648	352,678	(199,987)	0.51
Jul.-Sep. '04	12/9/04	4,640,968	253,513	(310,584)	0.52
Oct.-Dec. '04	1/31/05	4,701,706	246,352	(323,819)	0.62

11. InterBay's reports contained substantially inconsistent financial information. For instance, the net worth and EFC ratios reported from compiled data at the end of quarters has been significantly lower than those on InterBay's monthly reports. Similarly, the two different June reports showed greatly varying net worth and EFC ratios.

12. In August 2004, InterBay applied to renew its securities registration. InterBay's registration materials contained stale financial information that was at least 18 months old.

1 13. Since September 2004, InterBay's reports have acknowledged InterBay's capital  
2 deficiency violation under RCW 21.20.710. From at least September 2004 and as recently as  
3 August 2005, the Division alerted InterBay of its duties to comply with the Securities Act of  
4 Washington, including the net worth requirements in RCW 21.20.710, the EFC ratio  
5 requirements in WAC 460-16A-200, and the requirement to provide investors full disclosure of  
6 all material information, including current financial information. The Division has contacted  
7 and issued comments to InterBay about the tardiness and reliability of financial information in  
8 InterBay's reports and the disclosure materials, including financial information, in InterBay's  
9 registration application. InterBay has indicated that it needed more time to respond these  
10 comments and gather and prepare financial information. InterBay has not responded to all of  
11 the Division's comments.  
12

13 On March 24, 2005, InterBay withdrew its application for securities registration.  
14 InterBay later informed the Securities Division, through counsel, that because InterBay was no  
15 longer offering securities for sale, it was no longer subject to RCW 21.20.710, despite the need  
16 for capital to payoff the outstanding Notes.

17 14. During 2004, InterBay rolled over existing note holders as their Notes became due and  
18 provided inadequate disclosure.

19 15. InterBay has also failed to provide its note holders with annual financial statements for  
20 2004.

#### 21 EMERGENCY AND PUBLIC INTEREST

22 The Securities Administrator finds that the continued offering of InterBay Notes in the  
23 circumstances and manner described in the Tentative Findings of Fact, particularly given the  
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1 prior enforcement order, capital deficiency, and failure to provide information to its note  
2 holders and the Division, presents a threat to the investing public.

3  
4 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

5  
6 **CONCLUSIONS OF LAW**

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8 1. The offer or sale of the Notes described above constitutes the offer or sale of a security  
9 as defined in RCW 21.20.005(10) and (12).

10 2. InterBay is a “debenture company” as defined in RCW 21.20.705.

11 3. As set forth in Tentative Findings of Fact 8, 9, 10, 13, and 14, the Respondents have  
12 violated RCW 21.20.710, in at least the months of March, June, August, September, October,  
13 November, and December, 2004, by offering or selling securities but not maintaining the  
14 required net worth.

15 4. As set forth in Tentative Findings of Fact 8 through 14, the Respondents have violated  
16 RCW 21.20.010, in connection with the offer or sale of securities, by making untrue statements  
17 of material fact, or omitting to state material facts necessary in order to make the statements  
18 made not misleading, including failing to disclose full and current financial information.

19 5. As set forth in Tentative Findings of Fact 8, 9, 10, and 14, the Respondents have  
20 violated WAC 460-16A-200 by offering or selling securities without maintaining an earnings to  
21 fixed-charges ratio of 1 to 1 or greater.

22 6. As set forth in Tentative Finding of Fact 15, the Respondents have violated RCW  
23 21.20.840 by failing to send annually and in a timely manner a copy of its annual financial  
24 statements to each debenture holder.  
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7. The conduct set forth in Tentative Findings of Fact 8 through 15 constitutes unsafe or unsound practices in conducting the business of a debenture company under RCW 21.20.732 because: (A) the Respondents have not timely submitted monthly and quarterly reports in compliance with the terms of their permit; (B) the Respondents have not maintained current and accurate financial records; (C) the Respondents have been unable to adequately monitor, evaluate, and respond to important business issues such as profitability, net worth, and the prospect of insolvency; (D) the Respondents have not provided to the Division or their investors current financial information; and/or (E) the cumulative effect of these practices, the allegations in the above Tentative Findings of Fact, and/or the violations noted in the above Conclusions of Law constitute unsafe or unsound practices under RCW 21.20.732.

### **CONTINUING INVESTIGATION**

The Department is continuing to investigate the practices of the Respondents and their principals, employees, and agents to determine the full extent of the violations of the Securities Act of Washington that have occurred in this matter.

### **SUMMARY ORDER REVOKING EXEMPTIONS**

Based on the foregoing,

NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that the exemptions from securities registration provided in RCW 21.20.320 are REVOKED as to any transactions in InterBay securities.

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3 **NOTICE OF INTENT TO ENTER STOP ORDER AND ORDER TO CEASE AND**  
4 **DESIST**

5 Pursuant to RCW 21.20.280, RCW 21.20.390, RCW 21.20.395, RCW 21.20.840 and  
6 RCW 21.20.732, and based upon the Tentative Findings of Fact and Conclusions of Law, the  
7 Securities Administrator intends to order that:

8 1. Any further application for securities registration for InterBay Funding Group, Inc. shall  
9 be denied; and

10 2. InterBay Funding Group Inc., Donald J. Vanhook, Jeanne Vanhook, and their  
11 employees and agents each cease and desist from violations of RCW 21.20.010, the anti-fraud  
12 provisions of the Securities Act of Washington; WAC 460-16A-200, the earnings-to-fixed  
13 charges ratio for debt offerings; RCW 21.20.840 requiring delivery of annual financial  
14 statements to debenture holders and RCW 21.20.732, prohibiting unsafe or unsound practices  
15 by debenture companies.  
16

17 **NOTICE OF INTENT TO REQUIRE FILING QUARTERLY FINANCIAL REPORTS**  
18 **AND TO MAINTAIN MINIMUM NET WORTH**

19 Pursuant to RCW 21.20.390 and RCW21.20.700 and based upon the Tentative Findings  
20 of Fact and Conclusions of Law, the Securities Administrator intends to order that for so long  
21 as InterBay Funding Group has outstanding Notes:

22 1. InterBay Funding Group, Donald J. Vanhook and Jeanne Vanhook shall file  
23 quarterly financial reports for InterBay Funding Group with the Securities Division within  
24 thirty days after the end of each quarter; and  
25



1 2. InterBay Funding Group, Donald J. Vanhook and Jeanne Vanhook shall maintain the  
2 minimum net worth set forth in RCW 21.20.710 and shall make or cause to be made additional  
3 capital contributions as necessary to satisfy those minimum net worth requirements.  
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#### 5 **AUTHORITY AND PROCEDURE**

6 This Statement of Charges, Summary Order Revoking Exemptions, and Notice of Intent  
7 to Enter Stop Order and Order to Cease and Desist, to File Quarterly Financial Reports, and to  
8 Maintain Minimum Net Worth is entered pursuant to the provisions of RCW 21.20.325, RCW  
9 21.20.280, RCW 21.20.390, RCW 21.20.700 and RCW 21.20.732 and is subject to the  
10 provisions of chapter 34.05 RCW. The Respondents, InterBay Funding Group Inc., Donald J.  
11 Vanhook, and Jeanne Vanhook may each make a written request for a hearing as set forth in the  
12 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING  
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14 accompanying this order.

15 If a Respondent does not request a hearing, the Securities Administrator intends to  
16 adopt the above Tentative Findings of Fact and Conclusions of Law as final and make the  
17 Statement of Charges, Summary Order Revoking Exemptions, and Notice of Intent to Enter  
18 Stop Order and Order to Cease and Desist, to File Quarterly Financial Reports and to Maintain  
19 Minimum Net Worth permanent as appropriate to that Respondent.

20 Dated and Entered this 29th day of November, 2005  
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23 MICHAEL E. STEVENSON  
24 Securities Administrator  
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Approved by:



Martin Cordell  
Chief of Enforcement

Presented by:



Andrew Ledbetter  
Financial Legal Examiner

Presented by:



Janet So  
Financial Legal Examiner