

SECURITIES ACT INTERPRETIVE STATEMENT-16

RE: RCW 21.20.320(3), WAC 460-21B-060(22), WAC 460-22B-090(18) - UNSOLICITED ORDERS

Question presented:

Under what circumstances is an order or offer to buy received by a broker-dealer or salesperson "unsolicited"?

Statute and Rules:

RCW 21.20.320(3) exempts "any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy. . . ." (Emphasis added) **WAC 460-21B-060(22)**, pertaining to broker-dealers, and **WAC 460-22B-090(18)**, pertaining to salespersons, makes it a dishonest or unethical business practice to mark "any order ticket or confirmation as unsolicited when in fact the transaction is solicited."

Discussion:

Exemptions to registration are narrowly construed in order to help ensure investor protection. Therefore, the Administrator narrowly interprets the phrase "unsolicited order or offer to buy". Without limiting other possible circumstances, an "unsolicited order or offer to buy" does not include any transaction which involves the following action by a broker-dealer or salesperson:

1. Making of a direct or indirect solicitation that a customer purchase a security;
2. Recommending the purchase of a security through market letters, newsletters, or by otherwise circulating information which recommends the purchase;
3. Volunteering information on the issuer, either to a particular customer or to customers generally; or
4. Engaging in a transaction in a discretionary account or where the delivery of a prospectus or offering circular is required.

Conclusion:

A transaction will be deemed "solicited" under the aforementioned circumstances. Regardless of whether the order is solicited or unsolicited, the broker-dealer or salesperson is under the same duty to know, and to determine the suitability of the investor for, his or her client. This exemption is available for broker-dealers only and does not provide an exemption for the seller of the security.

Adopted: January 1, 1991; As amended: April 1, 1991 and May 31, 1996

Replaces: Statement of Policy 85-64

Deborah R. Bortner, Securities Administrator

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