



PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

Agency: Department of Financial Institutions, Securities Division

- Preproposal Statement of Inquiry was filed as WSR 07-15-011 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____ ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR 08-09-126

Title of rule and other identifying information: (Describe Subject) In order to allow interested persons additional time to submit comments, the Securities Division is continuing the rule-making proceeding concerning the proposed amendment to its rules to provide further clarification of when a person holds himself or herself out as a "financial planner" or "investment counselor." The rules the Division has proposed to amend are set forth in WAC 460-24A-040 and 460-24A-045.

Hearing location(s):

State of Washington
Department of Financial Institutions
150 Israel Rd, SW, Room 319
Tumwater, Washington 98501

Date: August 5, 2008 Time: 1:00 P.M.

Submit written comments to:

Name: Faith L. Anderson
Address: Department of Financial Institutions - Securities Division;
P.O. Box 9033; Olympia, WA 98507-9033
e-mail: fanderson@dfi.wa.gov
fax (360) 704-6480 by (date) August 5, 2008

Assistance for persons with disabilities: Contact

Carolyn Hawkey, P.O. Box 9033; Olympia, WA 98507-9033 by July 29, 2008
TTY (360) 664-8126 or (360) 902-8774

Date of intended adoption: August 6, 2008
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Securities Division has proposed to amend its rules to clarify that a person who uses a term or abbreviation thereof, or engages in any conduct, that would lead a reasonable person to believe that the person is holding himself or herself out as a "financial planner" or "investment counselor" holds himself or herself out as a "financial planner" or "investment counselor" and is therefore subject to registration as an investment adviser under RCW 21.20.0040 unless that person falls within the exception set forth in WAC 460-24A-045 for those that would not otherwise be considered an investment adviser. In order to achieve this goal, the Division proposed amendments to WAC 460-24A-040 to provide that a person not only holds himself or herself out as a "financial planner" or "investment counselor" when the person uses any of the terms already listed in that section, but also when the person "uses any other term or abbreviation thereof, or engages in any conduct, that would lead a reasonable person to believe that the person is holding himself or herself out as a 'financial planner' or 'investment counselor.'" The Division also proposed amendments to the exception for persons that would otherwise be considered investment advisers set forth in WAC 460-24A-045 to make minor changes to accommodate the proposed amendments to WAC 460-24A-040. Text of the proposed amendments to the Division's rules accompanies this notice.

Reasons supporting proposal: The amendments proposed by the Division should be adopted to provide greater clarity regarding when a person holds himself or herself out as an investment adviser, particularly given the growing use of professional designations that state or imply that a person has special expertise, certification, or training in financial planning, including the growing use of senior designations and certifications. The Division has concerns that these types of designations are being used by persons that are not registered as investment advisers.

Statutory authority for adoption: RCW 21.20.450; 21.20.005(6); 21.20.040(4)

Statute being implemented: RCW 21.20

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

DATE
June 25, 2008

NAME (type or print)
Scott Jarvis

SIGNATURE

TITLE
Director

CODE REVISER OFFICE
STATE OF WASHINGTON

JUN 26 2008

932

08-14-072

TIME
VER

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Financial Institutions, Securities Division

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Faith L. Anderson	150 Israel Road SW; Olympia, WA 98501	(360) 725-7825
Implementation..... Scott Jarvis	150 Israel Road SW; Olympia, WA 98501	(360) 902-8700
Enforcement..... Michael E. Stevenson	150 Israel Road SW; Olympia, WA 98501	(360) 902-8824

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

The Securities Act of Washington, chapter 21.20 RCW, and the existing rules adopted thereunder already subject persons who hold themselves out as "financial planners" or "investment counselors" to registration as investment advisers. Therefore, the adoption of the amendments to existing rules proposed in this notice will not add any additional compliance burdens for those subject to the rules but will provide greater clarity to those subject to these rules. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes. A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Please explain. The Department of Financial Institutions is not one of the agencies listed in RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

WAC 460-24A-040 Use of certain terms. ~~((+))~~ For the purposes of RCW 21.20.040~~((+3))~~ (4), ~~((use of any term, or abbreviation for a term, including the word))~~ a person holds himself or herself out as a "financial planner" or ((the word)) "investment counselor" ((is considered the same as the use of either of those terms alone.

~~(2) For the purposes of RCW 21.20.040(3), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to,))~~ when the person:

(1) Uses any of the following terms or abbreviations thereof:

- (a) Financial consultant;
- (b) Investment consultant;
- (c) Money manager;
- (d) Investment manager;
- (e) Investment planner;
- (f) Chartered financial consultant ~~((or its abbreviation))~~

(ChFC); or

(g) ~~((The abbreviation CFP.))~~ Certified financial planner (CFP); or

(2) Uses any other term or abbreviation thereof, or engages in any conduct, that would lead a reasonable person to believe that the person is holding himself or herself out as a "financial planner" or "investment counselor."

AMENDATORY SECTION (Amending WSR 97-16-050, filed 7/31/97, effective 8/31/97)

WAC 460-24A-045 Holding out as a financial planner or investment counselor--Exception. A person ~~((using a term deemed similar to "financial planner" or "investment counselor"))~~ who would otherwise be deemed an investment adviser under WAC 460-24A-040~~((+2))~~ will not be considered ~~((to be holding himself out as a financial planner for purposes of))~~ an investment adviser under RCW 21.20.005(6) and 21.20.040(4) under the following circumstances:

(1) The person is not in the business of providing advice relating to the purchase or sale of securities, and would not, but for ~~((his))~~ the use of ~~((such a))~~ certain terms or abbreviations thereof as set forth in WAC 460-24A-040(1) or engaging in certain conduct set forth in WAC 460-24A-040(2), be an investment adviser

required to register pursuant to RCW 21.20.040; and

(2) The person does not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and

(3) The person delivers to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:

(a) The person is not registered as an investment adviser or investment adviser ((salesperson)) representative in the state of Washington;

(b) The person is not authorized to provide financial planning or investment advisory services and does not provide such services; and

(c) A brief description of the person's business which description should include a statement of the kind of products offered or services provided (e.g., the person is in the business of selling securities and insurance products) and of the basis on which the person is compensated for the products sold or services provided; and

(4) The person has each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) The person shall retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as the person continues to receive compensation from such customers, but in no case for less than three years from the date of execution of the acknowledgment;

(6) If the person received compensation from the customer on more than one occasion, the person need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case the person must give the customer updated disclosure before receiving further compensation from the customer.