

SECURITIES ACT INTERPRETIVE STATEMENT-12

RE: RCW 21.20.320(11) - OFFERS TO HOLDERS OF TRANSFERABLE WARRANTS

Question presented:

Does RCW 21.20.320(11) exempt transactions pursuant to offers to transferable warrant holders of the issuer when such warrants are exercisable more than 90 days after their issuance?

Statute:

RCW 21.20.320(11) exempts "any transaction pursuant to an offer to an existing security holder of the issuer, including persons who at the time of the transaction are holders of. . . transferable warrants exercisable within not more than ninety days of their issuance. . ." (emphasis added)

Discussion:

The Administrator interprets the above-highlighted language to exclude from the exemption offers and sales of securities to warrant holders when such warrants are exercisable more than 90 days after their issuance. This interpretation will be followed even if warrants are exercised within 90 days of issuance unless the warrant agreement states that the warrants must be exercised within not more than 90 days of issuance.

Conclusion:

RCW 21.20.320(11) is not available for the issuance of securities to warrant holders if the warrant agreement allows a transfer of those warrants to take place more than 90 days after warrants were issued.

Adopted: January 1, 1991

Replaces: Statement of Policy 83-33

Jack L. Beyers, Securities Administrator

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