

SECURITIES ACT INTERPRETIVE STATEMENT-20

RE: RCW 21.20.320(10) - PREORGANIZATION CERTIFICATES

Question Presented:

What is meant by the phrase "preorganization certificate or subscription" in the exemption provided by RCW 21.20.320(10)?

Statute:

RCW 21.20.320(10) provides an exemption from registration for "any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber."

Discussion:

RCW 21.02.320(10) is based upon § 402(b)(10) of the Uniform Securities Act (Act). The official comment to the Act states that the purpose of § 402(b)(10) "is to enable a new enterprise to obtain the minimum number of subscriptions required by the corporation law. Hence there may be a publicly advertised offering of preorganization subscriptions. But there may be no payment until effective registration unless another exemption is available. . . . 402(b)(10) itself simply postpones registration; it does not excuse registration altogether." See CCH Blue Sky Law Reporter, ¶5542.

Therefore, RCW 21.20.320(10) is only available to the extent that the corporation laws require a minimum number of subscriptions to form a corporation. The Administrator notes that since no minimum subscription is required to form a corporation pursuant to Washington law, the exemption is not available to Washington corporations. The exemption is not available to non-corporate entities.

Conclusion:

RCW 21.20.320(10) is not available unless the issuer is a corporation and the laws under which it is incorporated require a minimum number of subscriptions.

Adopted: January 11, 1991

Replaces: N/A - New Interpretive Statement

Jack L. Beyers, Securities Administrator

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