

SECURITIES ACT POLICY STATEMENT - 05

RE: BLIND POOL/BLANK CHECK OFFERINGS - DUTY TO DISCLOSE MATERIAL FACTS - RCW 21.20.010 - UNLAWFUL OFFERS, SALES

Question Presented:

Will the Administrator grant a permit for the sale of equity securities in a blind pool or blank check program?

Statute:

RCW 21.20.010 makes "it unlawful for any person . . . (2) To make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading."

Discussion:

A "blind pool" is a company whose stated business purpose is to search for a business opportunity (or similar purpose) in a specified industry. A "blank check blind pool" or "blank check" is a company that has specified no particular industry in which it will seek a business opportunity.

The Administrator finds that the duty imposed upon an issuer by the above-cited provision cannot be met without disclosure regarding the allocation of the funds raised to specific properties or uses. Therefore, "blank check" offerings will not be granted a permit. This position is consistent with the Resolution of the North American Securities Administrators Association (NASAA) Declaring Blank Check Blind Pool Offerings To Be Fraudulent Practices, CCH NASAA Reports, ¶7,025, which declares that sales of such offerings per se constitute fraudulent business practice and the failure to disclose material facts.

"Blind pool" offerings which provide an indication of the general industry or use in which the funds will be invested, however, may be granted a permit, but only under the following conditions:

1. ALL of the funds raised in the offering must be escrowed until such time as the promoter is ready to purchase a specific property or embark on a specific project. At that time, the promoter must make supplemental disclosure of all material facts concerning the proposed use of proceeds and such disclosure must be passed upon by the Administrator.
2. The investors must be given at least 10 business days after the supplemental disclosure, as approved by the Administrator, is provided to them to decide whether to continue in the program. Investors must be offered a complete refund of all consideration paid in lieu of continued participation.
3. No investor will be allowed to invest more than the greater of 5% of his net worth or gross income. The issuer must take reasonable steps to insure compliance with this suitability standard.

Conclusion:

Blank check or blind pool programs generally involve sales which constitute failures to disclose material facts and, therefore, will not be granted registration permits. Such a program may be granted a registration permit only under certain conditions, which are intended to insure that the investors will receive disclosure of material facts as required under the statute.

Adopted: January 1, 1991

Replaces: Statement of Policy 84-59

Jack L. Beyers, Securities Administrator

Prepared by: William M. Beatty, Securities Examiner