

SECURITIES ACT INTERPRETIVE STATEMENT-13

RE: RCW 21.20.320(11) - OFFERS OR SALES TO EXISTING SECURITY HOLDERS -
APPLICABILITY IN PARENT/SUBSIDIARY SITUATIONS

Question Presented:

Does the exemption provided by RCW 21.20.320(11), which exempts offers and sales to existing security holders of the issuer, extend to situations in which the shares of a subsidiary are offered and issued to shareholders of the parent company?

Statute:

RCW 21.20.320(11) exempts from registration "any transaction pursuant to an offer to existing security holders of the issuer. . . ." (emphasis added)

Discussion:

The primary purpose of the Securities Act is to promote investor protection by requiring the registration of securities offers in this state. Therefore, exemptions from registration are narrowly construed. The term "issuer," as used in RCW 21.20.320 (11), means only the direct issuer of the security, and does not include affiliates of the issuer. When a subsidiary corporation issues securities, the subsidiary, not its parent, is the issuer for the purposes of RCW 21.20.320(11). Only shareholders of the subsidiary are existing security holders for purposes of the exemption.

Conclusion:

RCW 21.20.320(11) does not exempt the issuance of a wholly owned subsidiary's shares to shareholders in the parent company.

Adopted: January 1, 1991

Replaces: Interpretive Statement 2-89

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