
HOUSE BILL 2885

State of Washington 56th Legislature 2000 Regular Session

By Representatives Hatfield, Benson, Barlean, Santos, Talcott and Bush

Read first time . Referred to Committee on .

1 AN ACT Relating to the definition of investment adviser; and
2 amending RCW 21.20.005.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 21.20.005 and 1998 c 15 s 1 are each amended to read
5 as follows:

6 The definitions set forth in this section shall apply throughout
7 this chapter, unless the context otherwise requires:

8 (1) "Director" means the director of financial institutions of this
9 state.

10 (2) "Salesperson" means any individual other than a broker-dealer
11 who represents a broker-dealer or issuer in effecting or attempting to
12 effect sales of securities. "Salesperson" does not include an
13 individual who represents an issuer in (a) effecting a transaction in
14 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),
15 (11), (12), or (13), (b) effecting transactions exempted by RCW
16 21.20.320 unless otherwise expressly required by the terms of the
17 exemption, or (c) effecting transactions with existing employees,
18 partners, or directors of the issuer if no commission or other

1 remuneration is paid or given directly or indirectly for soliciting any
2 person in this state.

3 (3) "Broker-dealer" means any person engaged in the business of
4 effecting transactions in securities for the account of others or for
5 that person's own account. "Broker-dealer" does not include (a) a
6 salesperson, issuer, bank, savings institution, or trust company, (b)
7 a person who has no place of business in this state if the person
8 effects transactions in this state exclusively with or through the
9 issuers of the securities involved in the transactions, other broker-
10 dealers, or banks, savings institutions, trust companies, insurance
11 companies, investment companies as defined in the investment company
12 act of 1940, pension or profit-sharing trusts, or other financial
13 institutions or institutional buyers, whether acting for themselves or
14 as trustees, or (c) a person who has no place of business in this state
15 if during any period of twelve consecutive months that person does not
16 direct more than fifteen offers to sell or to buy into or make more
17 than five sales in this state in any manner to persons other than those
18 specified in (b) of this subsection.

19 (4) "Guaranteed" means guaranteed as to payment of principal,
20 interest, or dividends.

21 (5) "Full business day" means all calendar days, excluding
22 therefrom Saturdays, Sundays, and all legal holidays, as defined by
23 statute.

24 (6) "Investment adviser" means any person who, for compensation,
25 engages in the business of advising others, either directly or through
26 publications or writings, as to the value of securities or as to the
27 advisability of investing in, purchasing, or selling securities, or
28 who, for compensation and as a part of a regular business, issues or
29 promulgates analyses or reports concerning securities. "Investment
30 adviser" also includes financial planners and other persons who, as an
31 integral component of other financially related services, (a) provide
32 the foregoing investment advisory services to others for compensation
33 as part of a business or (b) hold themselves out as providing the
34 foregoing investment advisory services to others for compensation.
35 Investment adviser shall also include any person who holds himself or
36 herself out as a financial planner. However, a person who is a member
37 of an organization using "financial planner" or "financial adviser" in
38 its name and who merely cites such membership shall not, by those acts
39 alone, be deemed an investment adviser or to be holding himself or

1 herself out as an investment adviser or representing that he or she is
2 an investment adviser.

3 "Investment adviser" does not include (a) a bank, savings
4 institution, or trust company, (b) a lawyer, accountant, certified
5 public accountant licensed under chapter 18.04 RCW, engineer, or
6 teacher whose performance of these services is solely incidental to the
7 practice of his or her profession, (c) a broker-dealer or its
8 salesperson whose performance of these services is solely incidental to
9 the conduct of its business as a broker-dealer and who receives no
10 special compensation for them, (d) a publisher of any bona fide
11 newspaper, news magazine, news column, newsletter, or business or
12 financial publication or service, whether communicated in hard copy
13 form, by electronic means, or otherwise, that does not consist of the
14 rendering of advice on the basis of the specific investment situation
15 of each client, (e) a radio or television station, (f) a person whose
16 advice, analyses, or reports relate only to securities exempted by RCW
17 21.20.310(1), (g) an investment adviser representative, or (h) such
18 other persons not within the intent of this paragraph as the director
19 may by rule or order designate.

20 (7) "Issuer" means any person who issues or proposes to issue any
21 security, except that with respect to certificates of deposit, voting
22 trust certificates, or collateral-trust certificates, or with respect
23 to certificates of interest or shares in an unincorporated investment
24 trust not having a board of directors (or persons performing similar
25 functions) or of the fixed, restricted management, or unit type; the
26 term "issuer" means the person or persons performing the acts and
27 assuming the duties of depositor or manager pursuant to the provisions
28 of the trust or other agreement or instrument under which the security
29 is issued.

30 (8) "Nonissuer" means not directly or indirectly for the benefit of
31 the issuer.

32 (9) "Person" means an individual, a corporation, a partnership, a
33 limited liability company, a limited liability partnership, an
34 association, a joint-stock company, a trust where the interest of the
35 beneficiaries are evidenced by a security, an unincorporated
36 organization, a government, or a political subdivision of a government.

37 (10) "Sale" or "sell" includes every contract of sale of, contract
38 to sell, or disposition of, a security or interest in a security for
39 value. "Offer" or "offer to sell" includes every attempt or offer to

1 dispose of, or solicitation of an offer to buy, a security or interest
2 in a security for value.

3 Any security given or delivered with, or as a bonus on account of,
4 any purchase of securities or any other thing is considered to
5 constitute part of the subject of the purchase and to have been offered
6 and sold for value. A purported gift of assessable stock is considered
7 to involve an offer and sale. Every sale or offer of a warrant or
8 right to purchase or subscribe to another security of the same or
9 another issuer, as well as every sale or offer of a security which
10 gives the holder a present or future right or privilege to convert into
11 another security of the same or another issuer, is considered to
12 include an offer of the other security.

13 (11) "Securities Act of 1933," "Securities Exchange Act of 1934,"
14 "Public Utility Holding Company Act of 1935," "Investment Company Act
15 of 1940," and "Investment Advisers Act of 1940" means the federal
16 statutes of those names as amended before or after June 10, 1959.

17 (12) "Security" means any note; stock; treasury stock; bond;
18 debenture; evidence of indebtedness; certificate of interest or
19 participation in any profit-sharing agreement; collateral-trust
20 certificate; preorganization certificate or subscription; transferable
21 share; investment contract; investment of money or other consideration
22 in the risk capital of a venture with the expectation of some valuable
23 benefit to the investor where the investor does not receive the right
24 to exercise practical and actual control over the managerial decisions
25 of the venture; voting-trust certificate; certificate of deposit for a
26 security; certificate of interest or participation in an oil, gas or
27 mining title or lease or in payments out of production under such a
28 title or lease; charitable gift annuity; any put, call, straddle,
29 option, or privilege on any security, certificate of deposit, or group
30 or index of securities, including any interest therein or based on the
31 value thereof; or any put, call, straddle, option, or privilege entered
32 into on a national securities exchange relating to foreign currency;
33 or, in general, any interest or instrument commonly known as a
34 "security," or any certificate of interest or participation in,
35 temporary or interim certificate for, receipt for, guarantee of, or
36 warrant or right to subscribe to or purchase, any of the foregoing; or
37 any sale of or indenture, bond or contract for the conveyance of land
38 or any interest therein where such land is situated outside of the
39 state of Washington and such sale or its offering is not conducted by

1 a real estate broker licensed by the state of Washington. "Security"
2 does not include any insurance or endowment policy or annuity contract
3 under which an insurance company promises to pay money either in a lump
4 sum or periodically for life or some other specified period.

5 (13) "State" means any state, territory, or possession of the
6 United States, as well as the District of Columbia and Puerto Rico.

7 (14) "Investment adviser representative" means any partner,
8 officer, director, or a person occupying similar status or performing
9 similar functions, or other individual, who is employed by or
10 associated with an investment adviser, and who does any of the
11 following:

12 (a) Makes any recommendations or otherwise renders advice regarding
13 securities;

14 (b) Manages accounts or portfolios of clients;

15 (c) Determines which recommendation or advice regarding securities
16 should be given;

17 (d) Solicits, offers, or negotiates for the sale of or sells
18 investment advisory services; or

19 (e) Supervises employees who perform any of the functions under (a)
20 through (d) of this subsection.

21 (15) "Relatives," as used in RCW 21.20.310(11) includes:

22 (a) A member's spouse;

23 (b) Parents of the member or the member's spouse;

24 (c) Grandparents of the member or the member's spouse;

25 (d) Natural or adopted children of the member or the member's
26 spouse;

27 (e) Aunts and uncles of the member or the member's spouse; and

28 (f) First cousins of the member or the member's spouse.

29 (16) "Customer" means a person other than a broker-dealer or
30 investment adviser.

31 (17) "Federal covered security" means any security defined as a
32 covered security in the Securities Act of 1933.

33 (18) "Federal covered adviser" means any person registered as an
34 investment adviser under section 203 of the Investment Advisers Act of
35 1940.

--- END ---