



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

July 9, 2014

Ms. Faith Anderson, Esq.
Chief of Registration
Washington State Department of Financial Institutions
150 Israel Road, SW
Tumwater, WA 98501

Re: Proposed Rules for Crowdfunding for Small Business Capital as required under ESHB 2013, the Washington JOBS Act of 2014.

Dear Ms. Anderson:

On June 9, 2014, the Washington Department of Financial Institutions (DFI) announced its revised request for public comment on proposed rules for crowdfunding offerings for small business capital as required under the recently enacted Washington JOBS Act (Proposed Rules).¹ The Washington JOBS Act created a new exemption from state securities registration for crowdfunding offerings. The Proposed Rules are designed to establish filing requirements under this new exemption.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI and its members have concerns with some aspects of crowdfunding that can be suitably addressed through additional guidance from the DFI. Specifically, FSI firms and advisors do not wish to offer or otherwise participate in crowdfunding offerings and request additional information and guidance in order to avoid regulatory violations and liability for investment losses their clients may suffer when engaging in crowdfunding offerings.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned

¹ Proposed Rules for Small Business Crowdfunding, available at, <http://dfi.wa.gov/sd/rulemaking/pdf/crowdfunding/crowdfunding-draft-rules.pdf>.

² The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has approximately 100 Broker-Dealer member firms that have approximately 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 37,000 Financial Advisor members.

to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI’s primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI’s advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI supports the intended goals of crowdfunding, such as creating new jobs, increasing revenue and allowing small companies access to capital. However, FSI members have concerns regarding the scope of liability to firms and advisors who do not wish to engage in crowdfunding. Of the IBD member firms polled by FSI, none have plans to participate in crowdfunding in any fashion. However, firms and advisors believe that the proliferation of crowdfunding offerings and the high visibility of these investments through internet platforms pose a liability risk in instances where clients approach advisors regarding an interest to invest in crowdfunding offerings. For example, an investor interested in investing in a crowdfunding venture may approach their financial advisor with directions to liquidate some of their existing investments and tell their advisor they plan to invest the money in a crowdfunding venture. If the client later loses their investment in the crowdfunding venture, they may then place blame on their financial advisor for failing to advise them of the risks or for failing to advise them against investing. Even if the investor did not inform their advisor of their intention to invest in a crowdfunding venture, the investor may claim the advisor should have inquired and advised them against investing. Other examples might include a client simply asking their advisor about a crowdfunding venture and then creating the assumption that the resulting conversation constitutes financial advice. FSI members are concerned about these

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

scenarios resulting in investors filing claims against advisors and firms in order to recover their lost investment, even though the advisors and firms were not in any way involved in the crowdfunding venture. Therefore, FSI offers the following comments:

- **FSI's Requests that the DFI Provide Regulatory Guidance:** FSI requests clear guidance regarding advisor and firm liability with respect to investment losses in crowdfunding offerings. The DFI should consider providing information regarding the scope of liability for firms and advisors when an advisor is approached by a client with an inquiry regarding an investment in a crowdfunding offering.
- **FSI Requests that the DFI Provide Model Waiver Language:** FSI believes that the DFI should consider releasing model waiver of liability language that advisors can provide to clients with respect to crowdfunding. FSI has been working with other state regulators in developing model waiver language. Based on these conversations, we suggest the DFI adopt the following waiver language: "On (Date), you and I discussed your interest in a possible investment in [INSERT NAME OF CROWDFUNDING OFFERING], which is an intrastate Crowdfunding offering under [INSERT REFERENCE TO THE STATE STATUTE]. As you are aware, the offering is not made through [INSERT NAME OF BROKER-DEALER] and I did not solicit your investment in the crowdfunding offering, nor do I recommend, endorse or otherwise promote the offering. I encourage you to visit [INSERT LINK TO STATE OR OTHER CROWDFUNDING EDUCATIONAL WEBSITE] to better understand how Crowdfunding offerings work and the risks involved in investing in such an offering."

The proposed waiver language could be provided to a client at the time they discuss crowdfunding with their advisor or shortly thereafter. Once the disclosure is provided, the financial advisor would be assured that he had responded to his client's request without exposing himself to regulatory scrutiny or liability.

- **FSI Requests that the DFI Create an Educational Website on Crowdfunding:** FSI recommends that the DFI also provide information regarding crowdfunding and the associated risks on an informational website. Potential investors could access the website to learn more about crowdfunding and firms could easily direct clients to the website in the waiver language or in other educational efforts.

NASAA has a dedicated crowdfunding advisory page on its website that aims to educate investors on crowdfunding.⁵ The page can give investors an impartial description of crowdfunding and warn of some of the dangers associated with it. The DFI has already released a consumer alert on crowdfunding, and the website may elaborate on much of that information.⁶

Conclusion

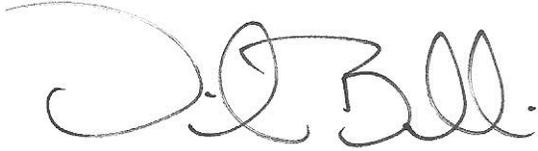
We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the DFI on this and other important regulatory efforts.

⁵ Informed Investor Advisory: Crowdfunding," available at, <http://www.nasaa.org/12842/informed-investor-advisory-crowdfunding/>

⁶ Consumer Alert, available at, <http://www.dfi.wa.gov/consumers/alerts/crowdfunding-alert.pdf>.

Thank you for considering FSI's comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel