

Michael Libes  
Managing Director, Fledge  
220 2<sup>nd</sup> Ave S  
Seattle, WA, 98104

Faith Anderson, Esq., Chief of Registration  
Department of Financial Institutions  
faith.anderson@dfi.wa.gov

Re: Washington Jobs Act of 2014

This letter summarizes my questions, concerns, and recommendations for the rules required to implement the Washington Jobs Act.

These suggestions are based on 22 years of experience as a Washington-based entrepreneur, where I founded 6 companies, where I teach Entrepreneurship to MBA students, and where I run two business accelerator programs, helping dozens of entrepreneurs start their businesses.

In general, I applaud the DFI for their effort in the rules making process for this new law. Overall, I find the proposed rules simple, reasonable, and usable. There are, however, three areas where I would suggest clarification, and one area I suggest a change:

1. I suggest adding a description of where the line is drawn between a “portal” and an “intermediary”. For example, in the current private equity fundraising, Angel groups act as intermediaries, without being licensed as broker-dealers. I expect under the Washington Jobs Act for Angel groups to be allowed to continue their important role in organizing investors, even when the companies selling equity are using the new exemption.
2. The draft *Washington Crowdfunding Form* appears to be an excellent document for generating corporate disclosures. I would, however, like to see some clarification on the submission and review process. Will this be similar to the SCOR disclosure, with 3-6 months of review and multiple iterations between the company and DFI, or more similar to the WAC 460-44A-504 exemption, where the exemption is presumed granted after 10 days, unless otherwise contacted by the DFI.

My suggestion is to set up the rules similar to WAC 460-44A-504, expecting that companies will be complying with the law and not creating a backlog of reviews for those law abiding companies. I suggest exemptions be granted after 15 calendar days unless the DFI contacts the company with issues. That will then help prevent a backlog of reviews, and help prevent a large amount of uncertainty in the process from the point of view of the companies trying to raise money. One (of many) reasons more companies do not use the SCOR

filings is the long, uncertain timeline between filing and being granted the right to begin raising money.

Perhaps it should be clarified that the DFI has the right to revoke the exemption at any time, and to sue any company for committing fraud during and after any fundraising, and thus granting the exemption does not prevent the DFI from future actions nor endorse the information in the disclosure. A statement like that is part of the form, but not explicitly stated within the rules.

3. The rules state that "*All advertising directed to or to be furnished to investors in an offering under shall be filed with the director no later than seven days prior to publication or distribution.*" Please clarify whether the DFI will simply keep these filings on record, for use in prosecuting fraud, or whether they will be reviewing these filings to prevent fraud. Further clarify the form the companies will need to submit to file any advertising after the initial filing. Given the potential of fundraising lasting a year or more, it is unreasonable to expect companies to have all their advertising materials ready and frozen by the time of the initial filing.
4. The one change I suggest is to remove the list of disallowed companies in paragraph 1 of *WAC 460-99C-030: Availability*. There is nothing in the law limiting the use of the Washington Jobs Act to specific types of companies, nor disallowing the use of the law for any specific types of companies. The popularity of mutual funds demonstrate that many investors prefer to place their trust in professional investment managers rather than pick individual investments. Research in accredited Angel investing has clearly demonstrated that investing in portfolios of investments provides better returns. Beyond the limits created by the 1940 Investment Act, this law should allow Washington residents to pool their capital for whatever use the investors agree upon.

Beyond these four areas, I have no other suggestions beyond to move forward with the final draft as quickly as possible, so that the companies and residents of Washington State can benefit from this new law as soon as possible. The DFI has the full authority to change the rules as needed, and we will know far more about what is missing once the first few dozen companies raise money using this mechanism.

Yours truly,



Michael Libes  
Managing Director, Fledge