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Re: Washington Jobs Act of 2014

This letter summarizes my questions, concerns, and recommendations for the proposed 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, a few areas where the rules could use some clarification or modification:

1. The list of *Activities of portals* in *WAC 460-99C-210* nicely outlines what a portal can and can not do, but leaves unclear how other entities may or may not provide advice and assistance to companies filing for this exemption. For example, in existing private equity fundraising, many Angel groups help entrepreneurs with their business plans, provide advice on fundraising options, etc. Similar assistance is provided within business plan competitions, by incubators and accelerators, and other consultants. I expect under the Washington Jobs Act for all these groups to be allowed to continue their important role in organizing investors, even when the companies selling equity are using the new exemption.
2. Section 4 of *WAC 460-99C-030. Availability* states that “The exemption is not available to debt offerings.” Then section 5 of that section includes convertible preferred stock as a form of equity. Meanwhile, a large percentage of funding for early-stage startups takes the form of Convertible Promissory Notes, which in the eyes of most investors is considered a form of equity, but which includes an interest rate and duration like debt. I suggest that these Convertible Notes be considered as equity too.
3. The new addition of the Convertible Preferred Stock seems out of place. All the Preferred Shares I’ve ever seen in startup deals are considered equity, whether they contain the specific preferences outlined in Section 5 or other preferences. According to the rules as written, an entrepreneur can not offer

convertible preferred shares without a liquidation preference, but with a dividend. Or no dividend, but every other preference listed. Given this exemption can apply to a Washington Limited Liability Corporation, where the equity interests (a.k.a. units) may contain a far wider variety of rights and privileges, I do not see any reasoning as to why these specific rights are being called out for Convertible Preferred Stock. Could the rules committee have been trying to provide rules to allow Convertible Promissory Notes and mistaken them for Convertible Preferred Shares?

4. In *WAC 460-99C-250 Advertising*, the list of permitted advertisements are nice. The one missing set of public notices that are not included are posts on social media, a form of solicitation that is far newer than all of the securities laws. I highly suggest adding one addition permitted advertisement, one that does little more than point readers to a website which contains a message that has been submitted to the DFI as part of paragraph 1 of that section.
5. I suggest removing 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. I do understand the complexities involved in disclosing the operations of a holding company or blind pool or portfolio company. None the less, many accredited investors today invest in such companies, and many more invest in public versions of these entities. Research in accredited Angel investing has clearly demonstrated that investing in portfolios of investments provides lower risks and higher 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.

I very much thank the DFI for their efforts to-date in getting these rules together, doing so quickly, and bringing crowdfunding to Washington State. I do look forward to seeing these rules in action in 2014, as well as seeing the rules evolve as we learn more through the use of this new law and related rules.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Michael Libes', with a long horizontal flourish extending to the right.

Michael Libes  
Managing Director, Fledge LLC