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VIA E-MAIL ATTACHMENT AND US MAIL

Ms. Faith Anderson, Esq, General Counsel
Securities Division, Washington Department of Financial Institutions
P.O. Box 9033
Olympia, WA 98507-9033

RE: Proposed Regulations implementing Washington Jobs Act of 2014

Dear Ms. Anderson:

Set forth below are comments that relate to the Division's proposed implementing regulations (the "Proposed Regulations") for the Washington Jobs Act of 2014 (the "Act"). Because I expect that I may provide additional input through the State Regulation of Securities Committee of the Business Law Section of the American Bar Association and the Securities Laws Committee of the Washington State Bar Association concerning the details of the Proposed Regulations, this letter is restricted to comments that relate to the nature of the portals through which the offerings are presumably to be made. These comments are mine alone and do not reflect any input from other members of the Business Law Section of the American Bar Association or the Securities Laws Committee of the Washington State Bar Association, nor does it constitute the official position of this firm or any of its clients on the subject.

I commend the Division's invitation for the public to submit comments on the Proposed Regulations, as this should expedite the final version of the Proposed Regulations and increase their usefulness to small businesses within the State.

Although Section 4(5) of the Act states that "[t]he portal shall work in collaboration with the director for the purposes of executing the offering upon filing with the director," nowhere in either the Act or the Proposed Regulations is there an express statement that a crowdfunding offering under the Act must be made through a portal, as defined in the Act and Proposed Regulations. This should be corrected by adding a statement in the Proposed Regulations that makes it clear that a crowdfunding offering under the Act may be made only through a portal. Although Section 4(5) implies this, it should be expressly stated for purposes of clarity.

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WAC 460-99C-020(4) defines "Portal" to mean either a port district, a local development organization,¹ or a broker-dealer registered with the Division. This is inherently ambiguous, at least to me it is, and should be clarified in the Proposed Regulations. The term "Portal" means a gateway or entrance to something, and it is usually associated with an internet portal, which provides access or links to other websites. Do the Act and the Proposed Regulations contemplate that a port district or local development organization must maintain an internet website through which the information concerning a small business may be accessed by investors? And would this be the exclusive manner by which this information might be accessed in order to conform to the Proposed Regulations?

Suppose, for example, that a local associate development organization were to set up a booth at a state fair and hand out to attendees hard copies of a small business' crowdfunding offering materials – assuming, of course, Washington residency were first established. Or that there were a display at the offices of the local associate development organization at which such hard copy offering information could be accessed. And what if an officer of the small business were available to answer questions. Would these be deemed to making the offering through a Portal within the meaning of the Act and the Proposed Regulations?

WAC 460-99C-210(3) of the Proposed Regulations creates another ambiguity and a dilemma. That provision provides "Portals are prohibited from engaging in the following activities: . . . (b) Soliciting purchases, sales, or offers to buy securities offered in connection with its services unless the portal is a broker-dealer registered with the Division." There is no comparable provision in the Act. This prohibition appears only in the Proposed Regulations.

Quite frankly, I am skeptical that many if any local associate development organizations or port districts in Washington would be amenable to registering as a broker-dealer, particularly with cases such as **In re Holmes Harbor Sewer District and Ibis Securities, LLC, SDO-045-02** imposing liability under the Securities Act of Washington on state governmental agencies, the *scienter* requirement of RCW 21.20.430(7) notwithstanding. It may be tricky enough to persuade them to serve as crowdfunding portals under any circumstances because, as you well know, under long-established interpretations under state and federal securities laws, any circulation of offering materials to potential investors by those entities as portals would be deemed to constitute "[s]oliciting purchases, sales, or offers to buy securities," which WAC 460-99C-210(3) of the Proposed Regulations expressly prohibits.

In light of the above, I respectfully suggest that a statement be added to the Proposed Regulations that makes it clear that a crowdfunding offering under the Act may be made only through a portal, but that the offering need not necessarily be made only through an internet

¹ This is apparently a typo in the Proposed Regulations, as Section 4(1) of the Act uses the term "local *associate* development organization" (emphasis supplied).

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website as long as facilities of local associate development organizations or port districts, which are subject to their supervision and control, are used. These local economic development entities are those with the "boots on the ground" under these circumstances in that they are most likely the ones that would be intimately familiar with the local small businesses and the individuals involved in the offering. If they should deem it appropriate, they should be able to introduce a small company and its management to potential investors at a booth at the state fair or anywhere else for that matter. Accordingly, WAC 460-99C-210(3)(b) of the Proposed Regulations should be deleted entirely in the final version, and I suggest that this be done.

When I first reviewed the Proposed Regulations, I had not noticed the prohibition of WAC 460-99C-210(3)(b) and had assumed that our legislature had intended to empower our local associate development organizations and port districts to manage these offerings from close range, which although novel appeared to make a lot of sense as long as a review is performed by the Division staff before the Director declares the offering exempt and the offering commences.

Please let me know if you should have any questions or should otherwise require clarification. I hope the foregoing will be useful to the Division in developing the final version of the Proposed Regulations.

Very truly yours,



Mike Liles, Jr.