

Chapter 460-99C WAC

CROWDFUNDING

WAC

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WAC 460-99C-010 Application. The rules in this chapter apply to the exemption from registration set forth in RCW 21.20.880 for intrastate offerings of securities exempt under section 3 (a)(11) of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147, 17 C.F.R. 230.147 (crowdfunding exemption). The rules are intended to assist Washington start-up companies in accessing capital in small securities offerings through equity crowdfunding (crowdfunding offering). Issuers may work in collaboration with organizations that qualify as portals to develop business plans, complete disclosure documents, to seek out other technical assistance, and to submit filings in connection with a public securities offering. The exemption is intended to reduce the costs and burdens of raising equity capital for small businesses without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible for this exemption shall use the Washington Crowdfunding Form as the disclosure document for the offering.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-010, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-020 Definitions. (1) "Escrow agent" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, an escrow agent that is registered under chapter 18.44 RCW, or any other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis.

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(2) "Local associate development organization" means a Washington associate development organization as defined in RCW 43.330.010.

(3) "Port district" means a port district formed under chapter 53.04 RCW.

(4) "Portal" means:

(a) A port district;

(b) A local associate development organization; or

(c) A broker-dealer registered with the division; that files offering materials with the director on behalf of issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 or that offers services to issuers as contemplated in RCW 21.20.883.

(5) "Promoter" means:

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of an issuer; or

(b) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, ten percent or more of any class of securities of the issuer or ten percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this subsection if such person does not otherwise take part in founding and organizing the enterprise.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-020, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-030 Availability. (1) The crowdfunding exemption in RCW 21.20.880 is intended to allow start-up companies to raise capital in small securities offerings to Washington residents. The rules in this chapter provide for the use of a simplified offering document designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the simplified Washington Crowdfunding Form and will, therefore, be unable to utilize this exemption. The director finds that the Washington Crowdfunding Form is generally unsuitable for the following issuers and programs and that, therefore, they will not be allowed to utilize the crowdfunding exemption unless written permission is obtained from the director based upon a showing that adequate disclosure can be made to investors using the Washington Crowdfunding Form:

(a) Holding companies, companies whose principal purpose is owning stock in, or supervising the management of, other companies;

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(b) Investment companies subject to the Investment Company Act of 1940, including private equity funds;

(c) Portfolio companies, such as real estate investment trusts;

(d) Development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;

(e) Companies with complex capital structures;

(f) Blind pools;

(g) Commodity pools;

(h) Companies engaging in petroleum exploration or production or mining or other extractive industries;

(i) Equipment leasing programs; and

(j) Real estate programs.

(2) The crowdfunding exemption is available only to a corporation or centrally managed limited liability company or limited partnership that is resident and doing business within Washington at the time of any offer or sale of securities.

(3) The aggregate purchase price of all securities offered by an issuer in an offering made pursuant to the crowdfunding exemption in RCW 21.20.880 may not exceed one million dollars.

(4) The crowdfunding exemption is available only to equity offerings by the issuer of the securities and is not available to any affiliate of that issuer or to any other person for resale of the issuer's securities. The exemption is not available to debt offerings.

(5) For the purposes of this section, "equity" includes convertible preferred stock that is authorized and issued pursuant to charter documents that provide holders of the convertible preferred stock with the following protections:

(a) A provision restricting the payment of dividends on common stock or other outstanding securities of the issuer unless comparable dividends are paid on all convertible preferred stock based on the number of common shares into which they are convertible;

(b) A liquidation preference that provides that the holders of the convertible preferred stock are entitled to receive in preference to the holders of any outstanding common stock an amount that is at least equal to the amount at which the convertible preferred stock was purchased from the company plus any accrued but unpaid dividends;

(c) A conversion feature that allows holders of the convertible preferred stock to convert their shares into common stock of the company at any time at the conversion rate of at least one common share per share of convertible preferred stock. The preferred stock may either be participating or non-participating preferred stock;

(d) An appropriate antidilution provision providing for an adjustment of the number of shares into which such stock is convertible upon any stock split, stock dividend, or similar event. Such charter documents must also provide for a similar adjustment upon the issuance of additional common stock, preferred stock, or convertible debt by the issuer for consideration less than either the consideration paid to the company for the convertible preferred stock or the current market price for the common stock;

(e) Voting rights that provide that holders of convertible preferred stock shall be entitled to that number of votes on all

matters presented to stockholders equal to the number of shares of common stock then issuable upon conversion of such shares;

(f) Voting rights that provide that as long as at least fifty percent of the convertible preferred stock issued remains outstanding, the approval by at least fifty percent of the voting interests in the outstanding shares of convertible preferred stock is required in connection with:

(i) The creation of any senior or pari passu security to the convertible preferred stock;

(ii) Any increase or decrease in the number of authorized securities;

(iii) The adoption or amendment of any incentive compensation plan;

(iv) Any adverse change to the rights, preferences, and privileges of the convertible preferred stock;

(v) Any redemption, repurchase, or other acquisition for value of any of the company's equity securities, other than from present or former consultants, directors, or employees pursuant to the terms of a stock option plan of the company;

(vi) Any material change in the company's line of business;

(vii) The merger, consolidation, or reorganization of the company with and into another company or entity, or of any other company or entity with and into the company;

(viii) The acquisition of a substantial portion of the assets or business of another company or entity or any other acquisition of material assets;

(ix) A sale of all or substantially all of the company's assets;

(x) Dissolution or liquidation of the company; and

(xi) Any other action materially adversely affecting the interests of the holders of the convertible preferred stock.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-030, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-040 Filing requirements. In addition to filing a properly completed Washington Crowdfunding Form, issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 shall file the following with the division:

(1) The filing fee as prescribed in WAC 460-99C-260;

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized in this state and all amendments thereto;

(3) The issuer's by-laws or operating agreement, and all amendments thereto;

(4) A copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managing members setting forth terms and or capital ownership interest to be issued;

(5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter;

(6) A copy of any agreements between the issuer and any portal;

(7) A copy of the escrow agreement between the issuer and an escrow agent located in the state of Washington in which offering proceeds will be deposited;

(8) A copy of any subscription agreement for the purchase of securities in this offering;

(9) A specimen or copy of the security to be offered, including required legends, if the issuer will issue physical certificates;

(10) A copy of all advertising and other materials directed to or to be furnished to investors in this offering; and

(11) Any other document reasonably requested by the director.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-040, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-050 Information requirements. The issuer shall furnish to prospective investors, at a reasonable time prior to the sale of securities in reliance on the crowdfunding exemption in RCW 21.20.880, the most recent Washington Crowdfunding Form declared exempt by the director, including all required exhibits thereto.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-050, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-060 Declaration of exempt offering. An offering made in reliance on the crowdfunding exemption in RCW 21.20.880 shall not commence until the director has declared the offering exempt. Neither the fact that an offering has been declared exempt under RCW 21.20.880 nor the fact that a Washington Crowdfunding Form has been filed constitutes a finding by the director that any document filed under these rules is true, complete, and not misleading. Neither any such fact nor the fact that a crowdfunding exemption is available means that the director has passed in any way upon the merits of or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-060, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-070 Duration of exempt offering. A crowdfunding offering under RCW 21.20.880 may be declared exempt for a maximum of twelve months. An exempt offering may be renewed for one additional twelve-month period in accordance with WAC 460-99C-100.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-070, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-080 Pending offering—Notice of termination. The director may in his or her discretion send notice to the issuer in any pending crowdfunding offering under RCW 21.20.880 in which no action has been taken for nine months immediately prior to the sending of such notice,

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advising the issuer that the pending filing will be terminated thirty days from the date of sending unless on or before the termination date the issuer makes application in writing to the director showing good cause why it should be continued as a pending offering. If such application is not made or good cause not shown, the director may terminate the pending offering.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-080, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-090 Amendments to Washington Crowdfunding Form—Material changes. In an offering made in reliance on the crowdfunding exemption in RCW 21.20.880, if at any time while the offering is ongoing there is a material change that would affect the accuracy of the information contained in the Washington Crowdfunding Form after the offering is declared exempt by the director, the issuer shall amend the form. In no event shall the Washington Crowdfunding Form be revised less often than every twelve months. All amendments must first be filed with the division and be declared exempt prior to their use.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-090, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-100 Renewal filing requirements. (1) A crowdfunding offering declared exempt under RCW 21.20.880 may be renewed by filing a renewal notice no later than thirty days prior to the expiration of the original exempt offering period declared by the director.

(2) A renewal notice shall consist of the following:

(a) A report of sales as of the most recent practicable date;

(b) A copy of the issuer's updated Washington Crowdfunding Form;

(c) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of renewal, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter; and

(d) The filing fee prescribed in WAC 460-99C-260.

(3) A crowdfunding offering shall not be considered renewed until the director has declared the renewal offering exempt.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-100, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-110 Minimum target offering amount. (1) The issuer shall specify a minimum target offering amount and deadline to raise the minimum target offering amount in its Washington Crowdfunding Form. The issuer must demonstrate to the director that the minimum target offering amount, together with other sources of financing, is sufficient to implement the business plan of the issuer. If the

proceeds are insufficient, the director may require a revised minimum target offering amount.

(2) The deadline by which the issuer must raise its minimum target offering amount may be no longer than twelve months from the date the offering is declared exempt by the director.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-110, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-120 Investor right of cancellation. (1)

In an offering conducted under RCW 21.20.880, an investor may cancel an investment commitment for any reason until such time as the target minimum offering amount has been raised.

(2) If there is a material change to the terms of the offering or to the information provided by the issuer in the Washington Crowdfunding Form before the minimum target offering amount has been raised, the issuer must give or send to any investor who has made an investment commitment notice of the material change and notice that the investor may cancel an investment commitment for any reason until such time as the target minimum offering amount has been raised.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-120, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-130 Escrow agreement provisions. (1)

The issuer must enter into an escrow agreement with an independent escrow agent, as defined in WAC 460-99C-020, located in the state of Washington that includes the following terms:

(a) All offering proceeds shall be maintained in an account controlled by the escrow agent;

(b) All offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the Washington Crowdfunding Form;

(c) If the proceeds do not meet the minimum requirements by the deadline set forth in the Washington Crowdfunding Form, the escrow agent must:

(i) Release and return the proceeds directly to the investors;

(ii) Pay to investors, on a pro rata basis, any interest earned on the proceeds; and

(iii) Not deduct any expenses, including fees of the escrow agent.

(d) No creditor or affiliate of the issuer, portals engaged by the issuer, or escrow agent will have any claim to the escrowed proceeds;

(e) The escrow agent agrees to maintain its independence from the issuer, any portal assisting with the offering, and the officers, directors, managing members, and affiliates of the issuer or any portal assisting with the offering.

(f) The director may inspect the records of the impound account maintained by the escrow agent at any reasonable time at the location of the records, and copy any record that is inspected.

(2) The escrow agreement must be signed by an officer of the issuer and an authorized representative of the escrow agent.

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(3) The escrow agent may not be affiliated with the issuer, any portal assisting with the offering, or any officers, director, managing member, or affiliate of the issuer or any portal assisting with the offering.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-130, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-140 Issuer compliance with investor limitations. Prior to accepting investor funds or an irrevocable commitment to invest, the issuer must obtain the following from each investor:

(1) Evidence of residency of the investor in the state of Washington;

(2) A copy of the Investor Certifications and Acknowledgements Form prescribed by the director that has been either manually or electronically signed by the investor.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-140, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-150 Aggregate investment limitations. (1) In each sale of securities in reliance on the crowdfunding exemption under RCW 21.20.880, the issuer must reasonably believe that the aggregate amount of securities sold to any investor by one or more issuers offering or selling securities under the crowdfunding exemption during the twelve-month period preceding the date of the sale, together with the securities to be sold by the issuer to the investor, does not exceed the lesser of:

(a) Two thousand dollars or five percent of the annual income or net worth of the investor, whichever is greater, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(b) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more.

(2) For the purpose of determining the annual income of an investor under this section, the annual income of an investor shall be the investor's lowest annual net income out of the two most recently completed calendar or fiscal years, provided that the investor has a reasonable expectation of having at least that amount of net income in the current calendar or fiscal year.

(3) For the purpose of calculating the net worth of an investor under this section:

(a) The investor's primary residence shall not be included as an asset;

(b) Indebtedness that is secured by the investor's primary residence, up to the estimated fair market value of that primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(c) Indebtedness that is secured by the investor's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

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[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-150, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-160 Evidence of residency. (1) At or before the time an issuer accepts any funds or an irrevocable commitment to invest by any person in an offering conducted in reliance on the crowdfunding exemption under RCW 21.20.880, either the issuer or an agent representing the issuer must obtain evidence of the residency of the person in the state of Washington.

(2) For purposes of subsection (1) of this section, the following is a nonexclusive list of prima facie evidence of the residency of any person provided, however, that the issuer or its agent does not have knowledge that such person is not a resident of the state of Washington:

(a) A valid driver's license, chauffeur's license, or official personal identification card issued by the state of Washington;

(b) A current Washington voter registration;

(c) A concealed weapons permit;

(d) A homeowner's insurance policy or invoice showing the address of the insured property or residence;

(e) A home utility bill (such as gas, electricity, water, garbage, landline telephone, or cable) or hook-up work order dated within the past sixty days. A utility bill or work order is not acceptable if two unrelated people are listed;

(f) Mortgage documents;

(g) A property tax bill or statement dated within the past twelve months;

(h) The person's name and address in a current phone book made by a telephone book publisher;

(i) A moorage bill or contract showing the person lives on a boat in a marina in the state of Washington;

(j) A federal or state government agency-issued check;

(k) A tribal ID that contains the person's current residential address;

(l) A filed property deed or title for the person's current residence;

(m) An auto insurance policy;

(n) A Washington state business license;

(o) Business mail dated within the past sixty days. Mail must include the person's first and last name, and must be from state or federal revenue departments, the Social Security Administration, the U.S. Treasury, or the Internal Revenue Service. It may not be addressed "in care of," "for," or "parent of";

(p) Medical records paid by insurance or a medical bill;

(q) A medicaid card or department of social and health services medical coupon;

(r) A pay stub that contains the person's name, the person's current residence address, the employer's name, and the employer's phone number or address;

(s) A professional license;

(t) A selective service card showing a Washington state address;

(u) A professionally filed tax return or filed copy sent to the person by the Internal Revenue Service for the most recent tax filing year;

(v) A W-2 form for the previous year;

(w) A Washington state vehicle registration.

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[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-160, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-170 Restrictions on resale. (1) Securities issued in reliance on the crowdfunding exemption in RCW 21.20.880 may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

(a) To the issuer of the securities;

(b) To an accredited investor;

(c) Pursuant to an effective registration statement under the Securities Act of Washington, chapter 21.20 RCW; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(2) Securities issued under the crowdfunding exemption in RCW 21.20.880 are also restricted by the requirements for the federal exemption from registration for intrastate offerings under section 3 (a)(11) of the federal Securities Act of 1933, 15 U.S.C. 77c (a)(11), and securities and exchange commission Rule 147, 17 C.F.R. 230.147, including restrictions on transfer of securities by the purchaser.

Note: Rule 147 generally provides that during the period in which securities that are part of an issue are being offered and sold by the issuer, and for a period of nine months from the date of last sale by the issuer of such securities, all resales of any part of the issue, by any person, shall be made only to persons residing within the state of Washington. Issuers are cautioned to carefully review and implement safeguards to ensure their compliance with the restrictions contained in Rule 147, as well as the restrictions contained in RCW 21.20.880.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-170, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-180 Quarterly reporting requirements. For as long as securities issued under the crowdfunding exemption in RCW 21.20.880 remain outstanding, the issuer shall provide a quarterly report to the issuer's shareholders by making such report publicly accessible, free of charge, at the issuer's internet web site address within forty-five days of the end of each fiscal quarter. The report must contain the following information:

(1) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them;

(2) The names of the issuer's owners of twenty percent or more of a class of outstanding securities, directors, officers, managing members and/or other persons occupying similar status or performing similar functions on behalf of the issuer;

(3) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-180, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-190 Final sales report. Upon completion of an offering made in reliance on the crowdfunding exemption in RCW 21.20.880, an issuer shall file a final sales

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report in the form prescribed by the director no later than thirty days after the last sale in the offering with the director that includes the following information:

- (1) The time period in which the offering was open;
- (2) The number of shares or units sold in the offering;
- (3) The number of investors that purchased shares or units in the offering; and
- (4) The dollar amount sold in the offering.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-190, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-200 Integration. (1) All sales that are part of the same offering in reliance on these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

(2) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the crowdfunding exemption under these rules:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involve issuance of the same class of securities;
- (c) Whether the sales have been made at or about the same time;
- (d) Whether the same type of consideration is received; and
- (e) Whether the sales are made for the same general purpose.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-200, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-210 Activities of portals. (1) A portal shall require, at a minimum, the following information from an issuer planning a crowdfunding offering under RCW 21.20.880 prior to offering services to the issuer or forwarding the issuer's materials to the director:

- (a) A description of the issuer, including type of entity, location, and business plan, if any;
- (b) The issuer's intended use of proceeds from the crowdfunding offering under RCW 21.20.880;
- (c) Identities of officers, directors, managing members and ten percent beneficial owners, as applicable;
- (d) A description of any outstanding securities; and
- (e) A description of any litigation or legal proceedings involving the issuer, its officers, directors, managing members, or ten percent beneficial owners, as applicable.

(2) Upon receipt of the information set forth in subsection (1) of this section, the portal may offer services to the issuer that the portal deems appropriate or necessary to meet the criteria for the exemption. Such activities may include:

- (a) Assistance with the development of a business plan;

(b) Ministerial assistance in completion of crowdfunding exemption filings under these rules;

(c) Referral to legal services;

(d) Referral to business consulting and accounting services to assist with compiling and reporting financial information required by these rules;

(e) Other technical assistance in preparation for a crowdfunding offering by the issuer; and

(f) Submission of exemption materials to the director.

(3) Portals are prohibited from engaging in the following activities:

(a) Providing investment advice or recommendations if the portal is not registered or exempt from registration as an investment adviser;

(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;

(c) Compensating employees, agents, or other persons for the solicitation of purchases, sales, or offers in connection with its services unless the portal is a broker-dealer registered with the division;

(d) Holding, managing, possessing, handling investor funds or securities, or otherwise acting in the manner of an escrow agent on behalf of an issuer; or

(e) Engaging in conduct constituting that of an underwriter or any other activity that constitutes purchasing securities for the purpose of distribution.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-210, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-220 Bad actor disqualification. (1) The crowdfunding exemption under RCW 21.20.880 shall not be available if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner, or managing member of the issuer; any beneficial owner of twenty percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of making an exemption filing under RCW 21.20.880; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the offering of securities; or any director, executive officer or other officer participating in the offering of any such solicitor, general partner, or managing member of such solicitor:

(a) Has been convicted, within ten years before making an exemption filing under RCW 21.20.880 or five years, in the case of issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the securities and exchange commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(b) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before making an exemption filing under RCW 21.20.880, that, at the time of filing, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the securities and exchange commission or a state securities commission (or an agency or officer of a state performing like functions); or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(c) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of making an exemption filing under RCW 21.20.880, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before making an exemption filing under RCW 21.20.880;

(d) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to the Securities Act of Washington, chapter 21.20 RCW, or any other state's securities law, within five years prior to making an exemption filing for an offering under RCW 21.20.880;

(e) Is currently subject to any state administrative enforcement order or judgment entered by the Washington state administrator of securities or any other state's securities administrator within five years prior to making an exemption filing for an offering under RCW 21.20.880 or is subject to any state's administrative enforcement order or judgment in which fraud or deceit including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to making an exemption filing for an offering under RCW 21.20.880;

(f) Is subject to an order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b) or 78o-4(c)) or section 203 (e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3 (e) or (f)) that, at the time of making an exemption filing under RCW 21.20.880:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(g) Is subject to any order of the Securities and Exchange Commission entered within five years before making an exemption filing under RCW 21.20.880 that, at the time of filing, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17 (a)(1) of the Securities Act of 1933 (15 U.S.C. 77q (a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 C.F.R. 240.10b-5, section 15 (c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(h) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(i) Has filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the securities and exchange commission that, within five years before such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(j) Is subject to a United States Postal Service false representation order entered within five years before the making of an exemption filing under RCW 21.20.880, or is, at the time of such filing, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(2) For purposes of subsection (1) of this section, "final order" shall mean a written directive or declaratory statement issued by a federal or state agency described in subsection (1)(c) of this section under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(3) Subsection (1) of this section shall not apply:

(a) Upon a showing of good cause and without prejudice to any other action by the director, if the director determines that it is not necessary under the circumstances that an exemption be denied;

(b) If, before the relevant filing, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judg-

ment, order or decree or separately to the director or its staff) that disqualification under subsection (1) of this section should not arise as a consequence of such order, judgment, or decree; or

(c) If the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under subsection (1) of this section. An issuer will not be able to establish that it has exercised reasonable care unless it has made, in light of the circumstances, factual inquiry into whether any disqualifications exist. The nature and scope of the factual inquiry will vary based on the facts and circumstances concerning, among other things, the issuer and the other offering participants.

(4) For purposes of subsection (1) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(a) In control of the issuer; or

(b) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such event.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-220, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-230 Disqualification based on reporting failures. An issuer that has sold securities in reliance on RCW 21.20.880 and has not complied with the quarterly reporting requirements set forth in WAC 460-99C-180 during the twelve months immediately preceding the filing of the Washington Crowdfunding Form is ineligible to offer securities in reliance on RCW 21.20.880.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-230, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-240 Books and records—Inspection rights. (1) An issuer that has filed or is required to file under the crowdfunding exemption must keep and maintain written or electronic records relating to offers and sales of securities made in reliance on the crowdfunding exemption for at least six years following the termination of the offering. These records shall include:

(a) The issuer's Washington Crowdfunding Form and all exhibits, together with all amendments thereto;

(b) Evidence of residency from each investor in the offering;

(c) A manually or electronically signed copy of the Investor Certifications and Acknowledgements Form for each investor in the offering;

(d) Final sales reports filed with the director; and

(e) Quarterly reports and all other communications with shareholders.

(2) The director may access, inspect, review, copy, and remove for inspection any records described in subsection (1) of this section.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-240, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-250 Advertising—Filing requirements. (1) All advertising directed to or to be furnished to investors in an offering under RCW 21.20.880 shall be filed with the director no later than seven days prior to publication or distribution.

(2) The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the administrator, unless specifically prohibited.

(a) So-called "tombstone" advertising, containing no more than the following information:

(i) Name and address of issuer;

(ii) Identity or title of security;

(iii) Per unit offering price, number of shares and amount of offering;

(iv) Brief, general description of business;

(v) Name and address of broker-dealer or underwriter, or address where offering circular or prospectus can be obtained; and

(vi) Date of issuance.

(b) Dividend notices, proxy statements and reports to shareholders, including periodic financial reports.

(c) Sales literature, advertising or market letters prepared in conformity with the applicable regulations and in compliance with the filing requirements of the SEC, FINRA, or an approved securities exchange.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-250, filed 10/1/14, effective 11/1/14.]

WAC 460-99C-260 Filing fees. The following fees apply to crowdfunding filings:

(1) The fee for filing an initial Washington Crowdfunding Form with the director is six hundred dollars.

(2) The renewal filing fee is one hundred dollars.

[Statutory Authority: RCW 21.20.450, 21.20.880, 21.20.883, 21.20.886, and 2014 c 144. WSR 14-21-001, § 460-99C-260, filed 10/1/14, effective 11/1/14.]