

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 judgment, 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.]