

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

**WAC 460-99C-010 Application.** The rules in this chapter apply to the exemption from registration set forth in RCW 21.20.880 (crowdfunding exemption) 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), or offers and sales of securities made under the federal exemption under section 28 of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147A, 17 C.F.R. 230.147A. 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))~~ The rules are 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))~~ to make an offering under the rules of this chapter shall use the Washington Crowdfunding Form as the disclosure document for the offering.

AMENDATORY SECTION (Amending WSR 14-21-001, 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.

~~(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 serv-

ices 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.

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**WAC 460-99C-030 Availability.** (1) (~~The crowdfunding exemption in RCW 21.20.880 is~~) These rules are 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~~) the exemption in RCW 21.20.880. 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 in RCW 21.20.880 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;
- (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, except entities formed to invest in a single, income-producing real estate property.

(2) The crowdfunding exemption in RCW 21.20.880 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 during any twelve-month period.

(4) The crowdfunding exemption is available only to equity or convertible debt securities 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 nonparticipating 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.)~~

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**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~~) bylaws 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 (~~per-~~~~tal~~) broker-dealer or other intermediary;
- (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, or other document evidencing the security, 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.

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**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.

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**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, other than an "accredited investor" as that term is defined under the Securities Act of 1933, 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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**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)) or the requirements for the federal exemption from registration for offerings under section 28 of the federal Securities Act of 1933, 15 U.S.C. 77z-3, and securities and exchange commission Rule 147A, 17 C.F.R. 230.147A, as applicable.

Note: Rules 147 and 147A generally provide(s) 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)) for a period of six months from the date of the sale by the issuer of a security pursuant to that rule, any resale of such security shall be made only to persons resident within the state or territory in which the issuer was resident at the time of the sale of the security by the issuer. Issuers are cautioned to carefully review and implement safeguards to ensure their compliance with the restrictions contained in Rule 147 or 147A, whichever is applicable, as well as the restrictions contained in RCW 21.20.880.

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**WAC 460-99C-180 ((Quarterly)) Annual 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)) an annual 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)) no later than one hundred twenty days after the end of the fiscal year covered by the report. An issuer may provide the report to its shareholders by posting a copy of the report on the issuer's web site. 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.

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**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~~) annual 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.

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**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, including written representation from each purchaser as to his or her residence;

(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~~) Annual 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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 460-99C-160	Evidence of residency.
WAC 460-99C-200	Integration.
WAC 460-99C-210	Activities of portals.