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3 February 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Jumpstart Our Business Startups (JOBS) Act--Proposed Funding Portals (Regulatory Notice 13-34)

Dear Ms. Asquith:

CFA Institute[1] appreciates the opportunity to comment on proposed rules by FINRA on funding portals for use with crowdfunding transactions under the JOBS Act. We primarily focus our comments below on aspects of the proposal relating to investor protection.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

We generally support the proposed rules that hold a member funding portal to a high standard of conduct. However, we encourage FINRA to provide additional rules that reflect requirements for portals noted in the SEC's release on Regulation Crowdfunding. For example, proposed Funding Portal Rule 200 requires a member funding portal ("MFP") to observe "high standards of commercial honor." We encourage FINRA to expand this rule by explicitly prohibiting non-broker MFPs from providing investment advice on the securities being offered through their conduits or opinions on the advisability of investing in an issuer's offering.

Discussion

In accordance with the JOBS Act that allows, among other things, the raising of capital through crowdfunding activities, SEC-registered funding portals must become members of FINRA and comply with its rules. FINRA has proposed these rules in keeping with JOBS

[1] CFA Institute is a global, not-for-profit professional association of more than 119,700 investment analysts, advisers, portfolio managers, and other investment professionals in 147 countries, of whom nearly 112,400 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 140 member societies in 61 countries and territories.

Act restrictions on an MFP's activities while aiming to maintain investor protections. The rules are modeled after comparable rules for broker-dealers, but are more limited, given the more limited role that MFPs will play in crowdfunding activities. The two proposed rules discussed below particularly address areas aimed at investor protections.

Rule 200—High Standards of Commercial Honor

Proposed Rule 200 would require MFPs to conduct their business observing "high standards of commercial honor and just and equitable principles of trade." They also would be required to effect transactions involving the purchase or sale of securities without manipulative, deceptive or fraudulent means. We support both of these requirements as reflecting basic tenets of good business.

In keeping with these objectives, MFPs will be prohibited, among other things, from sending communications that contain false or misleading statements, omissions of materials facts that would cause it to be misleading, prediction about performance or exaggerated or unwarranted claims.

This rule also would require communications be "based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security, industry, or service." Although these requirements do not apply to communications posted by issuers on an MFP's website, should the MFP know or have reason to know a communication to be false or misleading, or contain any untrue statement of material facts, the MFP may not allow it on its website.

We support these very basic requirements of honest and fair dealing. A crowdfunding investor must be able to trust that the communications provided on an MFP website are fair, true and not misleading, and that statements posted by issuers are accurate. Otherwise, the crowdfunding process will fail; a system lacking integrity will lose the confidence of investors, and thus doom the future success of other transactions.

Along these lines, and in keeping with proposed SEC requirements for MFPs, we encourage FINRA to explicitly prohibit MFP owners or operators (that are not registered brokers) from offering investment advice or recommendations on the securities being offered through their portals. Investors new to these types of transactions could easily assign undue importance to such advice or believe it to be sanctioned by regulators.

We also believe rules should expressly prohibit MFPs from compensating employees, agents or other persons for solicitations or sales relating to offerings they are facilitating as this would likely create conflicts of interest. Moreover, we urge adoption of a rule that prohibits non-broker MFPs from posting the advisability of investing in issuers or offerings, or an assessment of individual issuers, their business plans, management or risks associated with such investment. MFPs are not in a position to tout or criticize offerings or

their issuers and any attempts to do so could create significant confusion for investors. In its release on Regulation Crowdfunding, the SEC has proposed these prohibitions; we believe FINRA should follow through for the purpose of consistency and to avoid investor confusion with explicit rules that track those provisions.

Rule 300—Funding Portal Compliance

Under proposed Rule 300, an MFP would have to establish and maintain a supervisory system, including written procedures, to oversee its activities and associated persons. This rule also establishes the requirement for an MFP to allow examination and inspections by FINRA and the SEC. We support both of these requirements as needed to ensure the accountability of MFPs and to ensure they are in compliance with the laws and regulations established for crowdfunding activities.

In addition to requiring MFPs to establish anti-money laundering compliance programs, Rule 300 also would establish reporting requirements for MFPs. Specifically, if an MFP knows or should have known of any of the following allegations, it would have 30 days to report to FINRA that it or an associated person

- has been named as a defendant or respondent or found guilty in a proceeding involving violations of certain securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct;
- has been accused in writing of fraudulent conduct or misuse or misappropriation of funds or assets;
- has been sanctioned by or denied membership into an securities-, insurance-, commodities-, financial- or investment-related organization (or barred from associating with members of such organizations);
- has been involved with a felony, or with a misdemeanor that involves the purchase of a security, a false oath or report, bribery, perjury, burglary, larceny theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities or a conspiracy to commit any of these offenses;
- is a director or other entity that was suspended, expelled or had its registration denied or revoked by a regulatory body, jurisdiction or organization, or is associated with certain financial institutions connected with a felony or misdemeanor;
- is a defendant in certain securities-, commodities-, or financial-related insurance-civil litigation or claims for damages by an investor, broker, dealer or funding portal member; or
- is involved with the sale of a financial instrument, the provision of investment advice or the financing of such activities with any person who is subject to a “statutory disqualification.”

We support the requirement that MFPs alert FINRA about issues covered in the list above. Investors would wish either to be made aware whether an MFP or its affiliated persons are party to such issues prior to investing, or to bar MFPs with such problems from acting as a portal until these matters are addressed and remedied.

MFPs also must report to FINRA if any associated person is subject to disciplinary action involving suspension, termination, withholding compensation or other remuneration or the imposition of fines over $2,500 that "would have a significant limitation on the individual's activities on a temporary or permanent basis."

It is unclear from this how it will be determined if the disciplinary activity noted above "would have a significant limitation on the individual's activities". We suggest that FINRA provide guidance on how this should be applied.

Conclusion

We generally support the proposed funding portal rules in terms of requiring disclosures aimed at providing investor protections. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or Linda L. Rittenhouse at linda.rittenhouse@cfainstitute.org or 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards
and Financial Market Integrity
CFA Institute

/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets
CFA Institute