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January 21, 2016

Mr. Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2015-040 – Response to Comments**

Dear Mr. Fields:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing,<sup>1</sup> a proposed rule change to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the “Funding Portal Rules”) and related forms and, in addition, to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook. FINRA noted in the rule filing<sup>2</sup> that the proposed rules have been streamlined to reflect the limited scope of activity permitted to funding portals<sup>3</sup> while also maintaining investor protection. FINRA will monitor the development of funding portal business and may propose additional rules as merited.

The Commission received three comments in response to the proposal.<sup>4</sup> The CFIRA Letter supported the proposal as reflecting the limited permissible business

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<sup>1</sup> Securities Exchange Act Release No. 76239 (October 22, 2015), 80 FR 66348 (October 28, 2015) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2015-040) (the “rule filing,” “proposed rule change” or “proposal”).

<sup>2</sup> See 80 FR 66348, 66349.

<sup>3</sup> See note 20 infra.

<sup>4</sup> Letter from Chris Tyrrell, Chair, on behalf of the Board of Directors of CrowdFund Intermediary Regulatory Advocates, to Brent J. Fields, Secretary, SEC, dated November 18, 2015 (“CFIRA Letter”); Letter from Hugh D. Berkson, President, Public Investors Arbitration Bar Association, to Robert W. Errett, Deputy Secretary, SEC, dated November 18, 2015 (“PIABA Letter”); and Letter from Judith Shaw, President, North American Securities

activities of funding portals and consistent with economic efficiency. The NASAA Letter and the PIABA Letter suggested that the proposal should impose additional requirements to address concerns as to potential fraud. FINRA responds to the specific suggestions of the commenters, by topic, below. FINRA is separately submitting, not in response to comment on the proposed rule change, a Partial Amendment No. 1 to make conforming revisions to proposed Funding Portal Rules 100(b)(1), 300(a)(1)(A), 900(a)(4)(C), 900(a)(4)(F), 1200(a)(3), 1200(a)(4) and 1200(b)(4)(C).

### Timing

The PIABA Letter suggested that the SEC should reject the proposal at this time and that FINRA should recraft the proposal based upon further review and analysis in light of the SEC's Regulation Crowdfunding.<sup>5</sup> FINRA disagrees. As set forth more fully in the proposal, pursuant to Title III of the Jumpstart Our Business Startups ("JOBS") Act,<sup>6</sup> and Regulation Crowdfunding, funding portals are a new type of securities intermediary intended by Congress to play a role in increasing American job creation and economic growth through the new capital raising methods of crowdfunding.<sup>7</sup> FINRA has noted that the proposal is informed by the SEC's rulemaking and is intended to create a pathway for registered funding portals to become FINRA members, consistent with the JOBS Act and Regulation Crowdfunding, and subject to the FINRA By-Laws, FINRA Regulation By-Laws, and the proposed Funding Portal Rules.<sup>8</sup> FINRA's proposed Funding Portal Rules have been in preparation, with public input, for a considerable time.<sup>9</sup> Regulation

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Administrators Association, Inc., Maine Securities Commissioner, to Brent J. Fields, Secretary, SEC, dated November 19, 2015 ("NASAA Letter").

<sup>5</sup> The Commission adopted Regulation Crowdfunding on October 30, 2015. See Securities Exchange Act Release No. 76324 (October 30, 2015), 80 FR 71388 (November 16, 2015) (Final Rule: Crowdfunding) (the "Adopting Release").

<sup>6</sup> Pub. L. 112-106, 126 Stat. 306 (2012).

<sup>7</sup> See 80 FR 66348, 66363.

<sup>8</sup> See 80 FR 66348, 66349.

<sup>9</sup> For example, shortly after the enactment of the JOBS Act, FINRA solicited comment on appropriate regulation for crowdfunding activities. See Regulatory Notice 12-34 (July 2012) (FINRA Requests Comment on Proposed Regulation of Crowdfunding Activities). Further, as discussed in the proposal, FINRA requested comment, in a subsequent Regulatory Notice, on

Crowdfunding becomes effective on May 16, 2016; however, the registration requirements under Regulation Crowdfunding, and the SEC's new Form Funding Portal, become effective on January 29, 2016. FINRA believes that, to effectuate the Congressional intent and the purposes of Regulation Crowdfunding, it is important that FINRA should be in a position to timely implement the proposed Funding Portal Rules so that funding portals that plan to register with the SEC and seek FINRA membership may avail themselves of Regulation Crowdfunding as it becomes effective. As such, FINRA does not believe it would be appropriate to delay the implementation of the proposal. Lastly, FINRA noted in the proposal on multiple occasions that FINRA will consider whether future rulemakings are merited as regulators gain more experience with funding portals.<sup>10</sup>

### General Standards

As set forth more fully in the proposal,<sup>11</sup> proposed Funding Portal Rule 100(a) provides in part that all funding portal members and persons associated with funding portal members shall be subject to the FINRA By-Laws and FINRA Regulation By-Laws, unless the context requires otherwise, and the Funding Portal Rules. The PIABA Letter suggested that it is appropriate that funding portal members and their associated persons should be subject to the FINRA By-Laws and FINRA Regulation By-Laws, but suggested that the phrase "unless the context requires otherwise" is not clear as to its meaning and should be removed from the rule text.

In response, FINRA does not propose to make the suggested change. The phrase "unless the context requires otherwise" is intended to clarify the regulatory framework for funding portals by ensuring that such entities will not be subject to terms under the FINRA By-Laws and FINRA Regulation By-Laws that could not relate to them by virtue of their distinct status and limited permissible business activities under the JOBS Act and Regulation Crowdfunding. FINRA is not aware of any ambiguity that has arisen from the longstanding use of the phrase "unless the context requires otherwise" in other settings in the FINRA rulebook, such as FINRA Rule 0160(b), which sets forth specified definitions for purposes of the FINRA rules

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an earlier version of the proposed rules as set forth in the proposal. See Regulatory Notice 13-34 (October 2013) (FINRA Requests Comment on Proposed Funding Portal Rules and Forms); see also 80 FR 66348, 66367.

<sup>10</sup> See, e.g., 80 FR 66348, 66349, 66369.

<sup>11</sup> See 80 FR 66348, 66349-66350. See also Exhibit 5 in the proposal.

“unless the context requires otherwise.”<sup>12</sup> FINRA welcomes further discussion of this issue in the event any specific interpretive issues are identified.

#### Definition of Associated Person of a Funding Portal Member

For purposes of the proposed Funding Portal Rules, proposed Funding Portal Rule 100(b)(1), under the General Standards as set forth in Funding Portal Rule 100 and as amended by Partial Amendment No. 1, defines the terms “associated person of a funding portal member” or “person associated with a funding portal member” to mean “any sole proprietor, partner, officer, director or manager of a funding portal, or other natural person occupying a similar status or performing similar functions, or any natural person directly or indirectly controlling or controlled by a funding portal member, or any employee of a funding portal member, and, for purposes of FINRA Rule 8210, any other person listed in Schedule A of SEC Form Funding Portal.” Separately, proposed Funding Portal Rule 110(a)(1)(A), solely for purposes of the member application process, defines “associated person” to mean any “(1) sole proprietor, partner, officer, director or manager of a funding portal, or other natural person occupying a similar status or performing similar functions; (2) natural person directly or indirectly controlling or controlled by such funding portal, or any employee of a funding portal, except that any person associated with a funding portal whose functions are solely clerical or ministerial shall not be included in the meaning of such term; or (3) partnership, corporation, association, or other legal entity controlled by or controlling the FP Applicant,” as defined in Funding Portal Rule 110(a)(1)(B).<sup>13</sup>

The CFIRA Letter suggested that the exception for associated persons whose functions are “solely clerical or ministerial” from the definition of associated person for purposes of Funding Portal Rule 110(a)(1)(A) should be extended to the definition set forth in Funding Portal Rule 100(b)(1) under the General Standards. The CFIRA Letter suggested that, in the absence of such a revision, persons that are not associated persons for purposes of the member application process would be associated persons for purposes of the General Standards. The CFIRA Letter otherwise expressed support for the proposed membership process.

In response, FINRA notes that the General Standards definition of associated person in Funding Portal Rule 100(b)(1) versus the definition under Funding Portal 110(a)(1)(A) are tailored to different purposes. The language as to “solely clerical and ministerial” functions in Funding Portal Rule 110(a)(1)(A) is based on

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<sup>12</sup> The opening phrase of proposed Funding Portal Rule 100(b) (“When used in the Funding Portal Rules, unless the context otherwise requires . . .”) is based in large part on this usage. See Exhibit 5 in the proposal.

<sup>13</sup> See Exhibit 5 in the proposal.

longstanding usage under NASD Rule 1011(b),<sup>14</sup> which sets forth the definition of “associated person” for purposes of membership proceedings for broker-dealers. Proposed Funding Portal Rule 110(a)(1)(A) would perform a similar function for the member application process for funding portals seeking to become FINRA members. In this regard, FINRA noted in the proposal that the member application process is intended to be based on the current membership rules for broker-dealers and has been streamlined to reflect the limited nature of funding portal business.<sup>15</sup> By contrast, the proposed definition under Funding Portal Rule 100(b)(1) is intended for general application to funding portal members, similar to the definition of associated persons under paragraph (rr) under Article I of the FINRA By-Laws. This ensures that all associated persons of the funding portal, as defined by the rule, would be subject to the proposed regulatory framework. As such, FINRA does not propose to revise the definitions, other than to make the conforming revision to proposed Funding Portal Rule 100(b)(1) as set forth in Partial Amendment No. 1.

#### Fidelity Bond

As discussed in the proposal, FINRA is not proposing at this time to require funding portal members to maintain fidelity bond coverage.<sup>16</sup> The CFIRA Letter expressed support for this approach.<sup>17</sup> The PIABA Letter and the NASAA Letter suggested that funding portals should be subject to a fidelity bond requirement in view of their responsibilities and potential liability. The NASAA letter suggested such a requirement could be economically feasible.

In response, FINRA is not proposing a fidelity bond requirement at this time. As discussed in the proposal,<sup>18</sup> FINRA believes that this approach is appropriate in the interest of reducing potential burdens on prospective funding portal members

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<sup>14</sup> See, e.g., Securities Exchange Act Release No. 48969 (December 22, 2003), 68 FR 75681 (December 31, 2003) (Notice of Order Granting Approval of Proposed Rule Change; File No. SR-NASD-2003-007) (amending, among others, NASD Rule 1011).

<sup>15</sup> See 80 FR 66348, 66350.

<sup>16</sup> See 80 FR 66348, 66349.

<sup>17</sup> The CFIRA Letter expressed concern that though the proposal does not require fidelity bond coverage, proposed Form FP-NMA appears to require information as to such coverage. In response, FINRA noted in the proposal that proposed Form FP-NMA, as set forth in Exhibit 3a of the proposal, does not include such a requirement. See 80 FR 66348, 66350 n. 19.

<sup>18</sup> See 80 FR 66348, 66349, 66367.

given the limited nature of funding portal business and given that regulatory experience with funding portals is developing. FINRA notes that the SEC, in adopting Regulation Crowdfunding, considered, and determined not to adopt, a fidelity bond requirement for funding portals.<sup>19</sup> The SEC stated among other things that the potential burden associated with the requirement of a fidelity bond may not be justified by the potential benefits from such a requirement. The SEC noted its belief that at this time the prohibition on a funding portal from handling customer funds and securities<sup>20</sup> as well as the general anti-fraud provisions under relevant statutes and rules provide significant investor protections that do not need to be supplemented by a fidelity bond requirement. FINRA noted that FINRA will monitor the development of this area and determine whether a subsequent rulemaking regarding fidelity bonds or other financial responsibility requirements is merited.<sup>21</sup>

### Communications with the Public

As set forth more fully in the proposal, proposed Funding Portal Rule 200(c) is a streamlined version of FINRA Rule 2210 (Communications with the Public) and is aimed at prohibiting false and misleading statements.<sup>22</sup> The PIABA Letter suggested that the rule should include language to require funding portals to “provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service,” as FINRA had originally proposed in Regulatory Notice 13-34.<sup>23</sup> In response, FINRA noted in the proposal that the proposed rule had been streamlined vis-à-vis the version published in Regulatory Notice 13-34 to reflect the limited

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<sup>19</sup> See Adopting Release at 80 FR 71388, 71458.

<sup>20</sup> Under the JOBS Act and Regulation Crowdfunding, a funding portal may not: (1) offer investment advice or recommendations; (2) solicit purchases, sales, or offers to buy the securities offered or displayed on its Web site or portal; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its Web site or portal; (4) hold, manage, possess, or otherwise handle investor funds or securities; or (5) engage in such other activities as the Commission, by rule, determines appropriate. See Section 3(a)(80) of the Securities Exchange Act of 1934 (the “Act”) (15 U.S.C. 78c(a)(80)), as amended by the JOBS Act; see also Rule 300(c)(2) under Regulation Crowdfunding.

<sup>21</sup> See 80 FR 66348, 66367.

<sup>22</sup> See 80 FR 66348, 66353-66354; see also Exhibit 5 in the proposal.

<sup>23</sup> Regulatory Notice 13-34 (October 2013) (FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms).

scope of activity permitted to funding portals.<sup>24</sup> The phrase “sound basis for evaluating” the facts as to a security, industry or service could potentially suggest the activity of offering investment advice or recommendations to investors, which is prohibited as a funding portal business activity. As such, upon further consideration, FINRA removed the language in the version of the rule as set forth in the proposal, and does not propose to re-instate it.

### Reporting Requirements

As set forth more fully in the proposal, proposed Funding Portal Rule 300(c), largely based on current FINRA Rule 4530, requires a funding portal member to report to FINRA (and sets forth the obligations of such member’s associated persons to report to the member) regulatory proceedings, disciplinary and other events.<sup>25</sup> The PIABA Letter suggested that proposed Funding Portal Rule 300(c) should be modified so that:

- the specified 30 calendar day period for reporting should be reduced to ten days;
- the obligation to report when the funding portal member or an associated person of the funding portal member “is the subject of any written complaint involving allegations of fraudulent conduct or misuse or misappropriation of funds or assets” (as set forth in proposed Funding Portal Rule 300(c)(1)(A)(ii)) should be revised to read as set forth in FINRA Rule 4530(a)(1)(B) (“is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery”);
- the proposed rule should include the summary statistical and summary information required pursuant to FINRA Rule 4530(d); and
- the proposed rule should include the requirement to file with FINRA copies of the documents as specified under FINRA Rule 4530(f).

In response, FINRA does not propose to make the suggested revisions to the proposed rule. FINRA believes that the proposed 30 calendar-day period for reporting events under proposed Funding Portal Rule 300(c), which is the same as the reporting period for other FINRA members under FINRA Rule 4530, strikes the appropriate balance between prompt regulatory reporting for purposes of risk oversight and providing firms sufficient time to assess reportable events and submit complete and accurate reports. FINRA does not believe that it is necessary to impose

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<sup>24</sup> See 80 FR 66348, 66354.

<sup>25</sup> See 80 FR 66348, 66354-66355; see also Exhibit 5 in the proposal.

a shorter time period for funding portals, particularly given the limited scope of their permissible business activities relative to other FINRA members. Moreover, notwithstanding the reporting requirements of proposed Funding Portal Rule 300(c), proposed Funding Portal Rules 110(a)(3)(B) and 800(b)(2) would require funding portals to report statutory disqualification events within 10 calendar days. Statutory disqualification events are subject to a shorter reporting period because of the significant regulatory implications of such events as compared to other reportable events. With respect to written complaints, FINRA believes that the proposed rule is consistent with the goal of tailoring rule language to the limited permissible business activities of funding portals versus the business activities of broker-dealers. FINRA does not believe it is necessary to single out theft and forgery for purposes of this particular provision, especially given that funding portals are prohibited in the first place from holding, managing, possessing or otherwise handling investor funds or securities. That said, FINRA believes the proposed phrase “allegations of fraudulent conduct or misuse or misappropriation of funds or assets” is sufficiently broad to encompass such fraudulent conduct, or misuse or misappropriation of funds or assets, as would be involved in an act of theft or forgery. Further, FINRA notes that the proposed rule specifies in part *any* written complaint, as opposed to any written *customer* complaint, thereby giving the proposed requirement broader scope. With respect to the other requirements proffered by the PIABA Letter (statistical and summary information, and the filing of copies of the specified documents), FINRA noted in the proposal its intent to minimize potential costs and burdens at this early stage of development of funding portal business.<sup>26</sup> FINRA does not propose at this time to impose additional information or document collection requirements on funding portals. FINRA may revisit this issue in a subsequent rulemaking should such be merited as regulators gain more experience with funding portals.

#### Central Registration Depository

The NASAA Letter suggested that funding portals should be required to use the Central Registration Depository (“CRD”) to register and make ongoing disclosures. The NASAA Letter suggested that mandating use of CRD would be a reasonable expense for funding portals while providing a central location for regulators to easily access information. The NASAA Letter expressed concern whether information about funding portals and their associated persons would be made available to the public and other regulators. The CFIRA Letter expressed support for not requiring use of CRD, as requiring such use would be overly complex given the limited permissible business activity of funding portals. The CFIRA Letter suggested that not requiring the use of CRD would lead to cost savings for funding portals.

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<sup>26</sup> See 80 FR 66348, 66363.



In response, as discussed more fully in the proposal,<sup>27</sup> FINRA noted that it is in the process of developing systems, consistent with the need for regulatory flexibility, for the submission of specified information by the means and format prescribed by FINRA. For example, proposed Funding Portal Rule 110(a)(3)(A) requires applicants to submit Form FP-NMA, and proposed Funding Portal Rule 110(a)(4)(B) requires the submission of Form FP-CMA.<sup>28</sup> Proposed Funding Portal Rule 800(b) makes provision for the public display of specified information regarding funding portal members by FINRA.<sup>29</sup> As such, given that FINRA is developing systems appropriate to the limited permissible business activities of funding portals, FINRA does not propose at this time to impose an express requirement for the use of CRD.

#### Licensing and Examination

In the proposal, FINRA noted that FINRA is not imposing any broker-dealer equivalent licensing and examination requirement on associated persons of funding portals at this time.<sup>30</sup> The CFIRA Letter expressed support for this approach as leading to cost savings for funding portals. The NASAA Letter suggested that FINRA should impose licensing requirements on, at a minimum, individuals performing supervisory or compliance roles at funding portals in the interest of investor protection. The PIABA Letter suggested that employees in charge of compliance should be required to pass a rigorous licensing test. In response, FINRA reiterates, as noted in the proposal, that FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is needed as FINRA gains experience with funding portals under the proposed rules.

#### Application of Additional Rules

The NASAA Letter reiterated the suggestion that it proffered as to the proposal as originally published in Regulatory Notice 13-34<sup>31</sup> that FINRA should apply to funding portals certain of the current broker-dealer conduct rules in the FINRA rulebook. The NASAA Letter suggested FINRA should apply the prohibition against guarantees and sharing in accounts under FINRA Rule 2150 (Improper Use of

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<sup>27</sup> See 80 FR 66348, 66368.

<sup>28</sup> See Exhibit 3a, Exhibit 3b, and Exhibit 5 in the proposal.

<sup>29</sup> See Exhibit 5 in the proposal. See also further discussion below under “Public Disclosure of Information on Funding Portals.”

<sup>30</sup> See 80 FR 66348, 66364.

<sup>31</sup> See 80 FR 66348, 66368.

Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts), as well as FINRA Rule 3220 (Influencing or Rewarding Employees of Others), FINRA Rule 3240 (Borrowing From or Lending to Customers), FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security), and FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements).<sup>32</sup> The NASAA Letter further suggested that FINRA should reiterate the importance of sound recordkeeping by funding portals in compliance with Rule 404 under Regulation Crowdfunding.

As FINRA stated more fully in the proposal,<sup>33</sup> FINRA has sought to streamline the proposed rules to the extent possible to reflect the limited scope of activity permitted by funding portals while also maintaining investor protection.<sup>34</sup> FINRA will enforce the rules for funding portals as adopted by the SEC in Regulation Crowdfunding. FINRA noted that its rules should not duplicate rules adopted by the SEC in this area. The rules for funding portals as proposed by FINRA include the requirement under proposed Funding Portal Rule 200(a), based on longstanding FINRA Rule 2010, that a funding portal member must, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade. The proposed rules include Funding Portal Rule 200(b), which, based in large part on FINRA Rule 2020, provides that no funding portal member shall effect any transaction in, or induce the purchase or sale of, any security by means of, or by

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<sup>32</sup> The NASAA Letter also suggested FINRA should apply FINRA Rule 2210 (Communications with the Public). As discussed above, FINRA has proposed Funding Portal Rule 200(c), a streamlined version of FINRA Rule 2210.

<sup>33</sup> See 80 FR 66348, 66368.

<sup>34</sup> In this regard, FINRA does not propose to apply to funding portals, at this time, rules that do not appear tailored to the limited activities of such entities. For example, funding portals would not be subject to the business continuity plan ("BCP") requirements of FINRA Rule 4370. FINRA is not requiring a funding portal to maintain a BCP, given that, among other things, a funding portal may not hold, manage, possess, or otherwise handle investor funds or securities. FINRA, however, recognizes that funding portals are Internet-based businesses and, as part of FINRA's membership application process, we will request access to a funding portal's platform; we will also monitor, as part of FINRA's examination and surveillance process, the development of funding portal business to identify emergency or business disruptions at funding portal members that affect the ability of the members to meet their existing obligations to investors and issuers or for investors to access their securities positions. These efforts will assist in assessing whether additional rulemaking in this area is required.

aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance. Further, in adopting Regulation Crowdfunding, the SEC has adopted a set of rules that address such investor protection issues as measures to reduce the risk of fraud,<sup>35</sup> account opening,<sup>36</sup> requirements with respect to investor transactions,<sup>37</sup> payments to third parties,<sup>38</sup> and permissible communication channels.<sup>39</sup>

FINRA believes that the SEC's Regulation Crowdfunding and FINRA's proposed Funding Portal Rules, in combination, are robust enough to address a wide range of potential concerns that may arise from conduct by funding portals. For example, depending on the facts, proposed Funding Portal Rule 200(a) may apply in situations in which a funding portal charged a commission or fee that clearly is unreasonable under the circumstances. As such, FINRA does not propose to impose additional requirements on funding portals at this time. However, as discussed above, and as stated in the proposal, FINRA may impose additional requirements at a later time should FINRA determine that such requirements, based on the development of funding portal business under the FINRA Funding Portal Rules, and any other applicable rules, are merited.<sup>40</sup>

#### Suspicious Activity Report Filing

Pursuant to the Bank Secrecy Act ("BSA") (31 U.S.C. 5311, *et seq.*) and implementing regulations thereunder (31 CFR Chapter X), brokers and dealers in securities that are registered or required to be registered with the Commission must among other things establish and maintain an effective anti-money laundering program, which includes suspicious activity reports as appropriate. The NASAA Letter suggested that the proposal should include a requirement that funding portals file suspicious activity reports as a measure to stop money laundering.

In response, in the proposal, FINRA noted that the BSA and implementing regulations thereunder do not apply to funding portals at this time.<sup>41</sup> In the Adopting

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<sup>35</sup> See Regulation Crowdfunding Rule 301.

<sup>36</sup> See Regulation Crowdfunding Rule 302.

<sup>37</sup> See Regulation Crowdfunding Rule 303.

<sup>38</sup> See Regulation Crowdfunding Rule 305.

<sup>39</sup> See Regulation Crowdfunding Rule 402.

<sup>40</sup> See 80 FR 66348, 66349, 66369.

<sup>41</sup> See 80 FR 66348, 66349.

Release for Regulation Crowdfunding, the SEC indicated that FinCEN within the Department of the Treasury has primary regulatory responsibility for administering the BSA and is considering rule changes that would address funding portals.<sup>42</sup> As such, pending further action by the primary regulators of this area, FINRA is not imposing at this time a requirement on funding portals to develop and implement an anti-money laundering program.

#### Public Disclosure of Information on Funding Portals

As discussed more fully in the proposal, proposed Funding Portal Rule 800(b) is a streamlined version of FINRA Rule 8312 and addresses the public disclosure of information on funding portals by FINRA.<sup>43</sup> The PIABA Letter expressed concern that the rule does not appear to mandate disclosures by FINRA. The PIABA Letter suggested that the rule should insure that investors are able to obtain most if not all information that funding portals are obligated to report to FINRA pursuant to proposed Funding Portal Rule 300(c).

In response, FINRA notes that, pursuant to proposed Funding Portal Rule 800(b)(1), FINRA may provide access to the public, via an appropriate link on the FINRA website, to a funding portal member's current SEC Form Funding Portal, including amendments and registration withdrawal requests, as filed with the SEC pursuant to Regulation Crowdfunding. FINRA plans to exercise its authority pursuant to the rule, which is designed to provide FINRA sufficient flexibility as to carrying out the specified disclosures. Further, pursuant to proposed Funding Portal Rule 800(b)(2), FINRA shall make available to the public information filed by a funding portal member, in a format to be prescribed by FINRA, indicating whether the funding portal member or any associated person of the funding portal member is subject to an event described in Section 3(a)(39) of the Act. As such, FINRA believes that the rule as proposed suffices by its terms to ensure that statutory disqualification information as to funding portal members and their associated persons will be available to the public. FINRA does not propose to revise the proposed requirements.

#### Arbitration and Mediation

As discussed more fully in the proposal, proposed Funding Portal Rule 1200 is designed in part to provide that funding portal members will be subject to the FINRA Rule 1200 Series (Code of Arbitration Procedure for Customer Disputes).<sup>44</sup> The PIABA Letter and the NASAA Letter proffered suggestions to revise the arbitration

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<sup>42</sup> See note 1098 at 80 FR 71388, 71471.

<sup>43</sup> See 80 FR 66348, 66357; see also Exhibit 5 in the proposal.

<sup>44</sup> See 80 FR 66348, 66362; see also Exhibit 5 in the proposal.

procedures, expressing concerns that the current procedures under FINRA rules limit the options for investors. The PIABA Letter and the NASAA Letter suggested that investors should be given the right to opt out of arbitration agreements and pursue their claims in litigation. The CFIRA Letter supported the application of FINRA's existing rules for broker-dealers.

In response, as FINRA noted in the proposal, the purpose of the proposed rule is to ensure in part that funding portal members shall be subject to the existing rules in this area, unless the context requires otherwise.<sup>45</sup> The proffered changes to the arbitration rules raise issues for the securities industry in general that are beyond the scope of the proposal. Further, as to the current rules in this area, FINRA has previously noted that investors experience substantial savings in arbitration compared to litigation and that the benefits and cost savings of arbitration make filing an arbitration claim a less costly option for investors.<sup>46</sup> As such, FINRA does not propose to revise the proposed rule, other than to make the conforming revisions as set forth in Partial Amendment No. 1.

#### Miscellaneous

As discussed more fully in the proposal,<sup>47</sup> proposed FINRA Rule 4518 requires broker-dealers to notify FINRA prior to engaging, for the first time, in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act, or within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal. The CFIRA Letter requested additional guidance with respect to the rule. In response, FINRA notes that it will issue a Regulatory Notice to provide further guidance in this area.

The CFIRA Letter sought clarification as to whether securities offerings in reliance on Section 4(a)(6) of the Securities Act could be subject to the filing requirements of FINRA Rule 5123 (Private Placement of Securities). In response, FINRA does not require that members selling securities in such offerings submit a filing pursuant to FINRA Rule 5123.<sup>48</sup>

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<sup>45</sup> See 80 FR 66348, 66369.

<sup>46</sup> See Securities Exchange Act Release No. 73245 (September 29, 2014), 79 FR 59876 (October 3, 2014) (Order Approving Proposed Rule Change; File No. SR-FINRA-2014-026) (amending, among other things, the Code of Arbitration Procedure for Customer Disputes).

<sup>47</sup> See 80 FR 66348, 66363; see also Exhibit 5 in the proposal.

<sup>48</sup> In guidance regarding private placements, FINRA has stated: "FINRA will not require member firms that participate in crowdfunding offerings (under the JOBS Act) to make a filing pursuant to Rule 5123." See Private Placement

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The PIABA Letter suggested that FINRA Rule 8110 (Availability of Manual to Customers) should be applied to funding portals. In response, in the interest of streamlining the proposed requirements for funding portals, FINRA does not propose to apply the rule to such entities. FINRA notes that the Funding Portal Rules when approved will be fully available on the FINRA website for public access.

FINRA believes that the foregoing responds to the issues raised by the commenters. If you have any questions, please contact me at (202) 728-6961, email: [adam.arkel@finra.org](mailto:adam.arkel@finra.org).

Best regards,

/s/ Adam Arkel

Adam Arkel  
Associate General Counsel