

OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 346	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2015 - * 040 Amendment No. (req. for Amendments *)
Filing by Financial Industry Regulatory Authority Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/> Amendment * <input type="checkbox"/> Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/> Section 19(b)(3)(A) * <input type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires *		
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>		Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>	
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; min-height: 40px;"> Proposed Rule Change to Adopt the Funding Portal Rules and Related Forms and FINRA Rule 4518 </div>		
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.		
First Name * Adam Last Name * Arkel Title * Associate General Counsel E-mail * adam.arkel@finra.org Telephone * (202) 728-6961 Fax (202) 728-8264		
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. <div style="text-align: right;">(Title *)</div> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 40%;"> Date 10/09/2015 By Patrice Gliniecki (Name *) </div> <div style="width: 55%; text-align: center;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Senior Vice President and Deputy General Counsel</div> <div style="border: 1px solid black; padding: 5px; background-color: #cccccc; display: inline-block;">Patrice Gliniecki,</div> </div> </div> <p style="font-size: small;">NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</p>		

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the EFFF website.	
<div>Form 19b-4 Information *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
<div>Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
<div>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
<div>Exhibit 4 - Marked Copies</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
<div>Partial Amendment</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act,” “Exchange Act” or “SEA”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) 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. In addition, as part of the proposed rule change, FINRA proposes to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook.

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on July 11, 2013, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

Title III of the Jumpstart Our Business Startups (“JOBS”) Act,² enacted in 2012 with the goal of increasing American job creation and economic growth, contains key provisions relating to securities offered or sold through “crowdfunding.”³ Under Section 302 of the JOBS Act, a crowdfunding intermediary that engages in crowdfunding on behalf of issuers relying on the JOBS Act’s “crowdfunding exemption”⁴ is required to register with the SEC as a “funding portal”⁵ or broker and to register with an applicable self-regulatory organization.⁶

In October 2013, the SEC proposed Regulation Crowdfunding to require

² Pub. L. No. 112-106, 126 Stat. 306 (2012).

³ Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.

⁴ See new Section 4(a)(6) of the Securities Act of 1933 (the “Securities Act”) (15 U.S.C. 77d(a)(6)), as amended by the JOBS Act. The crowdfunding exemption creates an exemption from registration under the Securities Act for securities offered by issuers pursuant to Title III of the JOBS Act.

⁵ Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)), as amended by Title III of the JOBS Act, provides that the term “funding portal” means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)), that does not: (1) offer investment advice or recommendations; (2) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website 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. (The JOBS Act inadvertently created two Sections 3(a)(80) in the Act, the other being the definition of “emerging growth company,” added by Section 101(b) of Title I of the JOBS Act. All references in this filing to Section 3(a)(80) of the Act are to the definition of “funding portal” under Title III of the JOBS Act.)

⁶ See Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. 77d-1(a)(1) and (2)).

registration of funding portals and to implement the provisions of Title III of the JOBS Act.⁷ Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if adopted by the SEC and to apply for FINRA membership. Section 3(h)(2) of the Act,⁸ as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals. Further, FINRA has stated that its rulemaking would be informed by the SEC's rulemaking.⁹ Accordingly, FINRA is proposing the Funding Portal Rules and related forms that would apply to SEC-registered funding portals that become FINRA members pursuant to the JOBS Act and the SEC's Regulation Crowdfunding. The proposed Funding Portal Rules reflect Regulation Crowdfunding as proposed by the SEC and would implement, under FINRA rules, the provisions of Title III of the JOBS Act. FINRA has streamlined the proposed rules to reflect the limited scope of activity permitted by funding portals¹⁰ while also

⁷ See Securities Exchange Act Release No. 70741 (October 23, 2013), 78 FR 66428 (November 5, 2013) (Crowdfunding; Proposed Rules) (the "Regulation Crowdfunding Proposal"). The SEC's proposed Rule 400(a) under Regulation Crowdfunding requires in part that a funding portal must register with the Commission and become a member of FINRA or any other applicable national securities association registered under SEA Section 15A. FINRA is the only registered national securities association.

⁸ 15 U.S.C. 78c(h)(2).

⁹ See Securities Exchange Act Release No. 68633 (January 11, 2013), 78 FR 4186 (January 18, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Interim Form for Funding Portals Under the Jumpstart Our Business Startups Act; File No. SR-FINRA-2013-005).

¹⁰ See note 5 *supra*. Proposed Rule 300(c)(2) under Regulation Crowdfunding reflects the definition of funding portal as set forth in Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)).

maintaining investor protection. FINRA has written the proposed rules specifically for funding portals.¹¹

In developing the proposed Funding Portal Rules, FINRA has considered comments that were received in response to Regulatory Notice 13-34 (October 2013) (FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms) (the “Notice”).¹² The proposed Funding Portal Rules and forms as set forth in this filing are largely as published in the Notice. FINRA has made clarifying revisions and a number of additions to the proposal for administrative purposes. Further, as discussed below, FINRA has revised the proposal vis-à-vis the version published in the Notice to better align the provisions governing the right to appeal and hearing under the proposed membership application and eligibility rules with existing provisions for broker-dealer members. In addition, FINRA is not proposing at this time the proposed rule that would have required funding portal members to maintain fidelity bond coverage.¹³ Further, FINRA is not proposing at this time the rule that would have required funding portal members to develop and implement a written anti-money laundering program.¹⁴

¹¹ FINRA also has submitted a companion filing to adopt Section 15 of Schedule A to the FINRA By-Laws governing the fees for funding portals that are FINRA members. See SR-FINRA-2015-041.

¹² Comments are discussed in Item 5 of this filing.

¹³ FINRA is monitoring the development of funding portal business and will determine at a later time whether a rulemaking with respect to fidelity bonds or other financial responsibility requirements is merited. See also Item 5.A of this filing.

¹⁴ Pursuant to the Bank Secrecy Act (“BSA”) (31 U.S.C. 5311, *et seq.*) and implementing regulations thereunder (31 C.F.R. 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

As set forth in this filing, the proposed Funding Portal Rules consist of a set of seven rules (Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200) and related forms (Form FP-NMA, Form FP-CMA, Funding Portal Rule 300(c) Form, and Form FP-Statement of Revenue). In addition, as part of the proposed rule change, FINRA is proposing to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook. New FINRA Rule 4518 would apply to registered broker members. The proposed requirements of the Funding Portal Rules and related forms and FINRA Rule 4518 are set forth below.

A. Proposed Funding Portal Rule 100 (General Standards)

Proposed Funding Portal Rule 100 (General Standards), similar to the FINRA Rule 0100 Series, sets forth basic standards and definitions for purposes of the Funding Portal Rules. Paragraph (a) under the rule provides 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,¹⁵ unless the context requires otherwise, and the Funding Portal Rules. The rule provides that persons associated with a funding portal member shall have the same duties and obligations as a funding portal member under the Funding Portal Rules. For purposes of Section 1(a) of Article III of the FINRA By-Laws, the proposed rule provides that a registered broker or dealer shall include a registered funding portal.

The proposed rule provides that the terms used in the Funding Portal Rules, if

laundering program. The BSA and implementing regulations thereunder do not apply to funding portals at this time. See also Item 5.B of this filing.

¹⁵ FINRA has revised the proposed rule vis-à-vis the version published in the Notice to add “and FINRA Regulation By-Laws” to clarify that funding portal members will also be subject to the FINRA Regulation By-Laws.

defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws, unless a term is defined differently in a Funding Portal Rule, or unless the context of the term within a Funding Portal Rule requires a different meaning.

The proposed definitions contained in the rule are set forth under paragraph (b). The proposed definitions are largely based on definitions under current FINRA rules, modified as appropriate to apply to funding portal members. The proposed rule provides that, when used in the Funding Portal Rules, unless the context otherwise requires, the terms below have the following meanings:

- **Associated person of a funding portal member or person associated with a funding portal member:** The term “associated person of a funding portal member” or “person associated with a funding portal member” means 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.
- **By-Laws:** The term “By-Laws” means the By-Laws of the Corporation or the FINRA By-Laws.
- **Exchange Act or SEA:** The term “Exchange Act” or “SEA” means the Securities Exchange Act of 1934, as amended.
- **FINRA:** The term “FINRA” means, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.
- **Funding Portal:** The term “funding portal” is as defined pursuant to proposed Rule 300(c)(2) of SEC Regulation Crowdfunding.

- **Funding Portal Member:** The term “funding portal member” means any funding portal admitted to membership in FINRA.
- **Funding Portal Rules:** The term “Funding Portal Rules” means Funding Portal Rules 100 through 1200.
- **Investor:** The term “investor” does not include a broker, dealer or funding portal.
- **Person:** The term “person” includes any natural person, partnership, corporation, association, or other legal entity (provided, however, that for purposes of the definition of associated person of a funding portal member as set forth under the rule, the term “person” shall solely include a natural person).
- **SEC:** The term “SEC” means the Securities and Exchange Commission.
- **Securities Act:** The term “Securities Act” means the Securities Act of 1933, as amended.

B. Proposed Funding Portal Rule 110 (Funding Portal Application)

1. Proposed Funding Portal Rule 110(a) (Member Application Process)

Proposed Funding Portal Rule 110(a) addresses the membership application process (“MAP”) for funding portals (referred to in the rule as “FP Applicants”). The MAP will enable FINRA to assess whether funding portals are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules. The proposed rule is based on the current NASD Rule 1010 Series membership rules that apply to broker-dealers. However, as discussed below, FINRA

has simplified the MAP for funding portals to reflect the limited nature of their business.

The proposed rule requirements are set forth below.

- ***Definitions (Proposed Funding Portal Rule 110(a)(1))***

Paragraph (a)(1) of the proposed rule sets forth a set of definitions that apply solely for purposes of MAP. Specifically:

- **Associated Person:** The rule provides that, solely for purposes of paragraph (a) of Funding Portal Rule 110, the term “associated person” means 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.
- **FP Applicant:** The term “FP Applicant” means a person that applies for admission to FINRA as a funding portal member under paragraph (a)(3) of Funding Portal Rule 110 or a funding portal member that files an application for approval of a change in ownership or control under paragraph (a)(4) of the rule.¹⁶
- **Day:** The term “day” means calendar day. The rule provides that, solely for purposes of paragraph (a) of Funding Portal Rule 110, in calculating a

¹⁶ Proposed Funding Portal Rule 110(a)(3) and Rule 110(a)(4) are discussed below.

period of time, the day of the act (e.g., filing of application, service of notice) from which the period of time designated begins to run shall not be included, provided, however, that where the last day of a period so calculated is a Saturday, Sunday or day on which FINRA is otherwise closed, the period shall run until the end of the next business day.¹⁷

- **Department:** The term “Department” means the Department of Member Regulation of FINRA.
- **District:** The term “district” means a district established by the FINRA Regulation Board.

- ***Service or Filing Date (Proposed Funding Portal Rule 110(a)(2))***

Proposed Funding Portal Rule 110(a)(2)(A) provides that FINRA shall serve a notice or decision issued under paragraph (a) of the rule by electronic delivery.

Paragraph (a)(2)(B) of the rule provides that, for purposes of Funding Portal Rule 110(a), service by FINRA or filing by an FP Applicant shall be deemed complete on the date recorded by FINRA’s electronic systems for electronic communications or by other means of verification prescribed by FINRA.

- ***Application to be a Funding Portal Member (Proposed Funding Portal Rule 110(a)(3))***

Proposed Funding Portal Rule 110(a)(3)(A) provides that an FP Applicant for FINRA membership must submit its application to the Department by filing a Form FP-

¹⁷ As proposed in the Notice, the proposed definition of “day” for purposes of the MAP for funding portals did not address situations where the last day of a period calculated is a Saturday, Sunday or day on which FINRA is closed. FINRA has added this language in the interest of clarity.

NMA¹⁸ in the manner prescribed by FINRA and an application fee. Proposed Funding Portal Rule 110(a)(3)(B) provides that, at the time an FP Applicant for FINRA membership submits its application pursuant to paragraph (a)(3)(A) of the rule, the FP Applicant must submit information, in a format to be prescribed by FINRA, indicating whether the FP Applicant or any associated person (as defined in Funding Portal Rule 100(b)(1)) of the FP Applicant is subject to an event described in Section 3(a)(39) of the Act.¹⁹ The FP Applicant must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

- ***Application for Approval of a Change in Ownership or Control (Proposed Funding Portal Rule 110(a)(4))***

Proposed Funding Portal Rule 110(a)(4)(A) provides that a funding portal member must file an application for prior approval of any change:

- in the equity ownership or partnership capital, LLC membership interest, or other ownership interest of the funding portal member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital,

¹⁸ Proposed Form FP-NMA is set forth in Exhibit 3a. FINRA has modified the proposed form vis-à-vis the version published in the Notice to reflect the removal of the proposed anti-money laundering and fidelity bond requirements as had been set forth in the Notice and to make other clarifications. Consistent with the limited scope of business to be conducted by funding portals, the proposed form requires significantly less information than the Form NMA for broker-dealer applicants.

¹⁹ 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Act sets forth the definition of “statutory disqualification.”

- LLC membership interest, or other ownership interest; or
- of control persons of the funding portal member, other than the appointment or election of a natural person as an officer or director of the funding portal member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the funding portal member.

Paragraph (a)(4)(B) of the rule provides that a funding portal member must submit its application for prior approval of any of the changes described in Funding Portal Rule 110(a)(4)(A) to the Department by filing a Form FP-CMA²⁰ in the manner prescribed by FINRA and an application fee.

- ***Rejection of Application That Is Not Complete (Proposed Funding Portal Rule 110(a)(5))***

Proposed Funding Portal Rule 110(a)(5) provides that, if the Department determines within 14 days after the filing of an application pursuant to paragraphs (a)(3) or (a)(4) of the rule that the application is not complete, the Department shall reject the application and deem it not to have been filed. The rule provides that, in such case, within the 14 day period, the Department shall serve a written notice on the FP Applicant of the Department's determination and the reasons therefor. FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. The rule further

²⁰ Proposed Form FP-CMA is set forth in Exhibit 3b. FINRA has made clarifying revisions to the form vis-à-vis the version published in the Notice. Consistent with the limited scope of business to be conducted by funding portals, the proposed form requires significantly less information than is required for broker-dealer applicants.

provides that if the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant must submit a new application and fee under proposed Funding Portal Rule 110(a).

- ***Request For Additional Documents Or Information (Proposed Funding Portal Rule 110(a)(6))***

Proposed Funding Portal Rule 110(a)(6) provides that, within 14 days after the filing of an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application, and the FP Applicant must file any additional information and documents with the Department within 14 days after service of the Department's initial request. The rule provides that the Department may serve subsequent requests for additional information or documents at any time during the membership application process. Unless otherwise agreed by the Department and the FP Applicant, the FP Applicant must file any additional information and documents with the Department within seven days after service of any subsequent request.

- ***Withdrawal of Application (Proposed Funding Portal Rule 110(a)(7))***

Proposed Funding Portal Rule 110(a)(7) provides that, if an FP Applicant withdraws an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule within 14 days after filing the application, FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. The rule provides that if the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant must submit a new application and fee pursuant to paragraphs (a)(3) or (a)(4) of the rule.

- ***Lapse of Application (Proposed Funding Portal Rule 110(a)(8))***

Proposed Funding Portal Rule 110(a)(8) is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. The provision, based largely on NASD Rule 1012(b), is designed to ensure that the provisions governing lapse of an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule better align with existing provisions for broker-dealer members, while also reflecting the more streamlined application process provided for funding portal members in light of their limited permissible activities and the related shorter time frames in which the Department must act on an application. Proposed Funding Portal Rule 110(a)(8)(A) provides that, absent a showing of good cause, an application filed under paragraphs (a)(3) or (a)(4) of the rule shall lapse if an FP Applicant fails to:

- respond fully within 14 days after service of an initial written request, or within seven days after service of a subsequent written request, for information or documents under paragraph (a)(6) of the rule, or within such other time period as agreed to by the Department and the FP Applicant;
- appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (a)(9) of the rule, as discussed below; or
- file an executed membership agreement under paragraph (a)(11) of the rule, as discussed below, within seven days after service of the agreement, or within such other period as agreed to by the Department and the FP Applicant.

Proposed Funding Portal Rule 110(a)(8)(B) provides that if an FP Applicant wishes to again seek membership or approval of a change in ownership or control subsequent to the lapse of an application pursuant to paragraph (a)(8)(A) of this Rule, then the FP Applicant shall be required to submit a new application in the manner prescribed in paragraph (a)(3) or (a)(4) of the rule, respectively, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws. The rule provides that FINRA shall not refund any fee for a lapsed application.

- ***Membership Interview (Proposed Funding Portal Rule 110(a)(9))***

Proposed Funding Portal Rule 110(a)(9)(A) provides that, before the Department serves its decision on an application for new membership in FINRA, the Department shall conduct one or more membership interviews with a representative or representatives of the FP Applicant. The membership interview(s) may be conducted by video conference or such other means as FINRA may specify. Paragraph 110(a)(9)(B) of the rule provides that, at least five days before a membership interview, the Department shall serve on the FP Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the FP Applicant who are required to participate in the interview. The rule provides that the Department shall serve the notice in a manner consistent with proposed Funding Portal Rule 110(a)(2). The rule further provides that the FP Applicant and the Department may agree to a shorter or longer period for notice or a different method of service. Paragraph 110(a)(9)(C) of the rule provides that, unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 30 days after the filing of an application or within 14 days after the filing of all additional information or documents

requested, whichever is later.

- ***Standards for Granting or Denying Application (Proposed Funding Portal Rule 110(a)(10))***

Proposed Funding Portal Rule 110(a)(10) provides that, after considering an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule, other information and documents provided by the FP Applicant during the application process, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the FP Applicant meets each of the following five standards, as applicable:²¹

- The FP Applicant and its associated persons are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration all information in its possession, including information regarding whether an FP Applicant or its associated persons:²²

- is subject to an event described in Section 3(a)(39) of the Exchange Act; and

²¹ The five standards that FINRA is proposing are streamlined and consolidated vis-à-vis the 14 standards that apply to broker-dealer applications under NASD Rule 1014(a). FINRA believes that the streamlined, consolidated approach is appropriate to reflect the limited nature of funding portal business.

²² See proposed Funding Portal Rule 110(a)(10)(A) in Exhibit 5.

- is the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea of an FP Applicant or its associated persons.
- The FP Applicant has established all contractual or other arrangements and business relationships with banks, broker-dealers, clearing corporations, service bureaus, escrow agents, transfer agents, technology service providers, or others necessary to initiate the operations described in the FP Applicant's Form FP-NMA.²³
- The FP Applicant has a supervisory system that is reasonably designed to achieve compliance with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules.²⁴
- The FP Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.²⁵
- The FP Applicant has a recordkeeping system that enables the FP

²³ See proposed Funding Portal Rule 110(a)(10)(B) in Exhibit 5.

²⁴ See proposed Funding Portal Rule 110(a)(10)(C) in Exhibit 5.

²⁵ See proposed Funding Portal Rule 110(a)(10)(D) in Exhibit 5.

Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements.²⁶

- ***Granting or Denying Application (Proposed Funding Portal Rule 110(a)(11))***

Proposed Funding Portal Rule 110(a)(11)(A) provides that, if the Department determines that the FP Applicant meets each of the applicable standards in paragraph (a)(10) of the rule, the Department shall grant the application filed pursuant to proposed Funding Portal Rule 110(a)(3) or (a)(4). The rule provides that the FP Applicant's approval for membership shall be contingent upon the FP Applicant's filing of an executed written membership agreement. Paragraph (a)(11)(B) of the rule provides that, if the Department determines that the FP Applicant does not meet one or more of the applicable standards in proposed Funding Portal Rule 110(a)(10), the Department shall deny the application.

- ***Decision (Proposed Funding Portal Rule 110(a)(12))***

Proposed Funding Portal Rule 110(a)(12) provides that the Department shall serve a written decision on the application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule within 60 days after the filing of the application or such later date as the Department and the FP Applicant have agreed in writing.²⁷ The rule provides that if the Department

²⁶ See proposed Funding Portal Rule 110(a)(10)(E) in Exhibit 5.

²⁷ The proposed 60 day time frame is shorter than the 180 day time frame that applies to broker-dealer applicants under NASD Rule 1014(c). FINRA believes that the 60 day time frame for funding portals is appropriate to reflect the limited nature of funding portal business. The provision "or such later date as the Department and the FP Applicant have agreed in writing" is an addition to the proposal vis-à-vis the proposed rules as published in the Notice and is intended, based in large part on NASD Rule 1014(c), to better align the rule with existing

denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a)(10) of the rule. The rule provides that a decision that denies the application shall become effective upon service. The Department shall serve its decision and, as applicable, the membership agreement on the FP Applicant in accordance with paragraph (a)(2) of the rule.

- ***Appeal of Department's Decision (Proposed Funding Portal Rule 110(a)(13))***

Proposed Funding Portal Rule 110(a)(13) addresses an appeal of the Department's decision. FINRA has revised the proposed rule vis-à-vis the proposal as published in the Notice so that the appeal process, based in large part on NASD Rules 1015 and 1016, better aligns with existing provisions for broker-dealer applicants. As revised, the proposed rule among other things: (1) permits the FP Applicant to file a written request for review of the Department's decision with the full National Adjudicatory Council; (2) provides for the National Adjudicatory Council or the Review Subcommittee as defined in FINRA Rule 9120 to appoint a Subcommittee to participate in the review; (3) allows either the FP Applicant to request or the Subcommittee to direct a hearing; and (4) sets forth hearing procedures. In addition, FINRA has made other conforming revisions. The specific requirements of the proposed rule as revised are set forth below.

- Request for Review; Final Action

Paragraph (a)(13)(A)(i) of the rule provides that, within 14 days after service of a decision under paragraph (a)(12) of the rule, an FP Applicant may file a written request

provisions for broker-dealer members. In addition, FINRA has made other conforming revisions.

for review with the National Adjudicatory Council. A request for review must state with specificity why the FP Applicant believes that the Department's decision is inconsistent with the applicable standards set forth in paragraph (a)(10) of the rule or otherwise should be set aside, and state whether a hearing is requested. An FP Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Adjudicatory Council. Paragraph (a)(13)(A)(ii) of the rule provides that, if the FP Applicant does not file a request for a review, abandons its appeal or withdraws its notice of appeal, the Department's decision shall constitute final action by FINRA.

- Transmission of Documents

Paragraph (a)(13)(B) of the rule provides that, within 14 days after the filing of a request for review, the Department shall: transmit to the National Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and serve on the FP Applicant a copy of such documents (other than those documents originally submitted by the FP Applicant) and a copy of the index.

- Appointment of Subcommittee

Paragraph (a)(13)(C) of the rule provides that the National Adjudicatory Council or the Review Subcommittee as defined in FINRA Rule 9120 shall appoint a Subcommittee to participate in the review.²⁸ Paragraph (a)(13)(C) further provides that the Subcommittee shall be composed of two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.

²⁸ FINRA Rule 9120 among other things defines "Review Subcommittee" to mean a body appointed by the National Adjudicatory Council pursuant to the FINRA Regulation By-Laws.

- Powers of Subcommittee

Paragraph (a)(13)(D) of the proposed rule provides that, if a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. The rule provides that if a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the FP Applicant or the Department in connection with the request for review.

- Hearing

Paragraph (a)(13)(E) of the rule addresses the hearing:

- Notice: Paragraph (a)(13)(E)(i) provides that, if a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the National Adjudicatory Council or service of the notice by the Subcommittee. The rule provides that the National Adjudicatory Council shall serve written notice of the date and time of the hearing to the FP Applicant by email, facsimile or overnight courier not later than 14 days before the hearing;
- Counsel: Paragraph (a)(13)(E)(ii) provides that the FP Applicant and the Department may be represented by counsel at a hearing conducted pursuant to the rule;
- Evidence: Paragraph (a)(13)(E)(iii) provides that formal rules of evidence shall not apply to a hearing under the rule. Not later than five days before the hearing, the FP Applicant and

the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. The rule provides that if the FP Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph;

- Transcript: Paragraph (a)(13)(E)(iv) of the proposed rule provides that the hearing shall be recorded and a transcript prepared by a court reporter. The rule provides that a transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The FP Applicant, the Department, or a witness may seek to correct the transcript. The rule further provides that, upon notice to the FP Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

- Additional Information, Briefs

Paragraph (a)(13)(F) of the rule provides that, at any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the FP Applicant or the Department to file additional information or briefs. The rule provides that any additional information or brief filed shall be provided to all parties before the National

Adjudicatory Council renders its decision.

- Subcommittee Recommendation

Paragraph (a)(13)(G) of the rule provides that the Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council within 60 days after the date of the hearing held pursuant to paragraph (a)(13)(E) of the rule.

- Decision

Paragraph (a)(13)(H) of the rule provides that, after considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions.

- Discretionary Review by the FINRA Board

Paragraph (a)(13)(I)(i) of the rule provides that the National Adjudicatory Council shall provide a copy of its decision to the Board. Alternatively, the National Adjudicatory Council may remand the membership proceeding with instructions. If the Board does not call the decision for review under paragraph (a)(13)(I)(ii) of the rule, as discussed below, the National Adjudicatory Council shall issue the written decision after the expiration of the Board call for review period, and the decision shall constitute final FINRA action.

Paragraph (a)(13)(I)(ii) of the rule provides that a Governor may call a membership proceeding for review by the Board at the next meeting of the Board that is at least 15 days after the date on which the Board received the decision. If a call for review is made, the Board shall review the membership proceeding not later than the next meeting of the Board. The rule provides that the Board shall issue a written decision

affirming, modifying or reversing the National Adjudicatory Council's decision and setting forth its findings and conclusions. Alternatively, the Board may remand the membership proceeding with instructions. The rule provides that the decision shall constitute final FINRA action, unless the Board remands the membership proceeding.

- ***Application to the SEC for Review (Proposed Funding Portal Rule 110(a)(14))***

Proposed Funding Portal Rule 110(a)(14) provides that a person aggrieved by final action of FINRA under paragraph (a) of the rule may apply for review by the SEC pursuant to Section 19(d)(2) of the Act.²⁹ The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the SEC otherwise orders.

- ***Filing of Misleading Information as to Membership or Registration (Proposed Funding Portal Rule 110(a)(15))***

Proposed Funding Portal Rule 110(a)(15) provides that no funding portal member or person associated with a funding portal member shall file with FINRA information with respect to membership or registration that is incomplete or inaccurate so as to be misleading, or that could in any way tend to mislead, or shall fail to correct such filing after notice thereof.

C. Proposed Funding Portal Rule 200 (Funding Portal Conduct)

Based in large part on FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), proposed Funding Portal Rule 200(a) provides that a funding portal member, in the conduct of its business, shall observe high standards of commercial honor

²⁹ 15 U.S.C. 78s(d)(2).

and just and equitable principles of trade.

Based in large part on FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), proposed Funding Portal Rule 200(b) 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 aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance.

Proposed Funding Portal Rule 200(c) (Communications with the Public) is aimed at prohibiting false and misleading statements. The proposed rule is a streamlined version of FINRA Rule 2210 (Communications with the Public) and sets forth the following requirements:³⁰

- Paragraph 200(c)(1) of the rule defines the term “funding portal communication” to mean any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.
- Paragraph 200(c)(2) of the rule addresses content standards. Paragraph 200(c)(2)(A) provides that no funding portal communication may:
 - include any false, exaggerated, unwarranted, promissory or misleading statement or claim;
 - omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;

³⁰ FINRA has further streamlined the rule vis-à-vis the version published in the Notice to reflect the limited scope of activity permitted by funding portals. See note 5 supra.

- state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the funding portal member's business practices; or
- predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment.

Further, paragraph (c)(2)(B) of the rule provides that all funding portal member communications must be based on principles of fair dealing and good faith and must be fair and balanced. Paragraph (c)(2)(C) of the rule provides that all funding portal member communications must prominently disclose the name of the funding portal member, or the name under which the funding portal member primarily conducts business as disclosed on the member's Form FP-NMA.

- Paragraph 200(c)(3) of the rule addresses issuer communications.

Specifically, the rule provides that the content standards of paragraphs (c)(2)(A) and (B) of the rule shall not apply to any communication on the funding portal member's website that is prepared solely by an issuer; provided, however, that no funding portal member may include on its website any issuer communication that the funding portal member knows or has reason to know contains any untrue statement of a material fact or is otherwise

false or misleading.

D. Proposed Funding Portal Rule 300 (Funding Portal Compliance)

1. Proposed Funding Portal Rule 300(a) (Supervisory System)

Proposed Funding Portal Rule 300(a) is a streamlined version of FINRA's supervision rules and is designed to permit funding portal members flexibility to tailor their supervisory systems to their business models. Paragraph (a)(1) of the rule requires that each funding portal member establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. The rule provides that a funding portal member's supervisory system must provide, at a minimum, for:

- the establishment and maintenance of written procedures to supervise the activities of the funding portal and its associated persons;
- the designation of a person with authority to carry out the supervisory responsibilities of the funding portal member; and
- reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

Paragraph (a)(2) of the rule is designed to align in large part with the inspections and examinations provisions of proposed Rule 403(c) under Regulation Crowdfunding. Proposed Funding Portal Rule 300(a)(2) provides that a funding portal member must permit the examination and inspection of all of its businesses and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by representatives of FINRA and the Commission, and must cooperate with the

examination, inspection or investigation of any persons directly or indirectly using its platform.

2. Proposed Funding Portal Rule 300(b) (Executive Representative)

As discussed above, the General Standards under proposed Funding Portal Rule 100 provide 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. Article IV, Section 3 of the FINRA By-Laws requires, in brief, that each FINRA member appoint and certify to FINRA an executive representative to represent, vote, and act for the member in FINRA affairs. Consistent with FINRA Rule 4517(b),³¹ proposed Funding Portal Rule 300(b) requires each funding portal member to designate to FINRA, for purposes of Article IV, Section 3 of the FINRA By-Laws, an executive representative. The rule requires that each funding portal member must update its executive representative designation in the manner prescribed by proposed Funding Portal Rule 300(d), as discussed below.

3. Proposed Funding Portal Rule 300(c) (Reporting Requirements)

Proposed Funding Portal Rule 300(c) requires funding portal members to report to FINRA (and sets forth the obligations of such members' associated persons to report to

³¹ The executive representative requirement is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. FINRA believes it is helpful to prospective funding portal members to add this administrative requirement to the Funding Portal Rules for purposes of clarity.

the member) regulatory proceedings, disciplinary and other events.³² The rule is largely based on current FINRA Rule 4530 (Reporting Requirements). Specifically, the rule sets forth the following requirements.

- Paragraph (c)(1) of the rule requires each funding portal member to promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the member knows or should have known of the existence of any of the following:
 - the funding portal member or an associated person of the funding portal member:³³
 - is named as a defendant or respondent in any regulatory proceeding, whether foreign or domestic, involving an alleged violation of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations, standards of conduct or by-laws, or has been found by a regulatory body or self-regulatory organization, whether foreign or domestic, to have violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct;³⁴
 - is the subject of any written complaint involving allegations of

³² Funding portal members would use the Funding Portal Rule 300(c) Form for their reporting requirements pursuant to the rule. See Exhibit 3c of this filing.

³³ See proposed Funding Portal Rule 300(c)(1)(A) in Exhibit 5.

³⁴ See proposed Funding Portal Rule 300(c)(1)(A)(i) in Exhibit 5.

fraudulent conduct or misuse or misappropriation of funds or assets;³⁵

- is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities-, insurance-, commodities-, financial- or investment-related regulatory body or self-regulatory organization, whether foreign or domestic, or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;³⁶
- is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false 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, or substantially equivalent activity in a domestic, military or foreign court;³⁷
- is a director, controlling stockholder, partner, officer or sole

³⁵ See proposed Funding Portal Rule 300(c)(1)(A)(ii) in Exhibit 5.

³⁶ See proposed Funding Portal Rule 300(c)(1)(A)(iii) in Exhibit 5.

³⁷ See proposed Funding Portal Rule 300(c)(1)(A)(iv) in Exhibit 5.

proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, funding portal, underwriter or insurance company that was suspended, expelled or had its registration denied or revoked by any regulatory body, jurisdiction or organization, whether foreign or domestic, or is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to, any felony or misdemeanor in a foreign or domestic court;³⁸

- is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or arbitration, or is the subject of any claim for damages by an investor, broker, dealer or funding portal member that relates to the provision of financial services or relates to a financial transaction, and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the funding portal member is the defendant or respondent or is the subject of any claim for damages by an investor, broker, dealer or funding portal member, then the reporting to FINRA shall be required only when such judgment, award or

³⁸

See proposed Funding Portal Rule 300(c)(1)(A)(v) in Exhibit 5.

settlement is for an amount exceeding \$25,000;³⁹

➤ is, or is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act, provided, however, that this requirement shall not apply to activities with a member or an associated person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member or to be associated with a member. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification;⁴⁰ or

○ an associated person of the funding portal member is the subject of any disciplinary action taken by the funding portal member involving suspension, termination, the withholding of compensation or of any other remuneration in excess of \$2,500, the imposition of fines in excess of \$2,500 or is otherwise disciplined in any manner that would have a significant limitation on the individual’s activities on a temporary or permanent basis.⁴¹

- Paragraph (c)(2) of the rule provides that each funding portal member shall

³⁹ See proposed Funding Portal Rule 300(c)(1)(A)(vi) in Exhibit 5.

⁴⁰ See proposed Funding Portal Rule 300(c)(1)(A)(vii) in Exhibit 5.

⁴¹ See proposed Funding Portal Rule 300(c)(1)(B) in Exhibit 5.

promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the funding portal member has concluded or reasonably should have concluded that an associated person of the funding portal member or the funding portal member itself has violated any securities-, commodities-, financial-or investment-related laws, rules, regulations or standards of conduct of any foreign or domestic regulatory body or self-regulatory organization.

- Paragraph (c)(3) of the rule provides each person associated with a funding portal member must promptly report to the funding portal member the existence of any of the events set forth in paragraph (c)(1)(A) of the rule.
- Paragraph (c)(4) of the rule provides that nothing contained in the rule shall eliminate, reduce or otherwise abrogate the responsibilities of a funding portal member to promptly disclose required information on SEC Form Funding Portal as applicable, to make any other required filings or to respond to FINRA with respect to any investor complaint, examination or inquiry. The rule provides that, in addition, a member need not report an event otherwise required to be reported under paragraph (c)(1)(A) of the rule if the member discloses the event on SEC Form Funding Portal, consistent with the requirements of that form, or as required pursuant to proposed Funding Portal Rule 800(b)(2).⁴²

⁴²

As further discussed below, proposed Funding Portal Rule 800(b) addresses the public disclosure of information on funding portals by FINRA and requires, among other things, that funding portal members provide and update information regarding statutory disqualifications.

- Paragraph (c)(5) of the rule provides that, for purposes of the rule, Supplementary Material .01 through .07, .09 and .10 of FINRA Rule 4530 (the “Supplementary Material”) shall apply,⁴³ provided, however, that, as the context requires:
 - the term “member” as used in the Supplementary Material shall mean “funding portal member” as defined pursuant to proposed Funding Portal Rule 100(b);
 - the term “associated person” as used in the Supplementary Material shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to proposed Funding Portal Rule 100(b);
 - Supplementary Material .01 shall apply to paragraphs (c)(1)(B) and (c)(2) of proposed Funding Portal Rule 300;
 - Supplementary Material .02 and .03 shall apply to paragraphs (c)(1)(A)(i) and (c)(2) of the rule;
 - Supplementary Material .05 and .07 shall apply to paragraphs (c)(1) and (c)(2) of the rule;

⁴³ The Supplementary Materials provide additional guidance as to specified requirements under the rule. Supplementary Materials .01 and .02 address members’ conclusions of violative conduct. Supplementary Material .03 addresses the meaning of the term “found” as used in the specified provisions of the rule. Supplementary Material .04 addresses the meaning of the term “regulatory body” for purposes of the rule. Supplementary Material .05 provides additional guidance as to reporting of individual and related events. Supplementary Material .06 addresses the calculation of monetary thresholds. Supplementary Material .07 addresses former associated persons. Supplementary Material .09 defines the meaning of the term “financial related” for purposes of the rule. Supplementary Material .10 provides guidance as to findings and actions by FINRA.

- Supplementary Material .06 shall apply to paragraph (c)(1)(A)(vi) of the rule; and
- Supplementary Material .10 shall apply to paragraphs (c)(1)(A)(i) and (c)(1)(A)(iii) of the rule.

4. Proposed Funding Portal Rule 300(d) (Contact Information Requirements)

Proposed Funding Portal Rule 300(d), based in large part on the contact information requirements set forth in FINRA Rule 4517(c), is designed to require funding portal members to report to FINRA specified contact information. Specifically, the rule provides:

- Each funding portal member must report to FINRA all contact information required by FINRA through such means as FINRA may specify.
- Each funding portal member must promptly update its required contact information (including its executive representative designation and contact information as required by Article IV, Section 3 of the FINRA By-Laws), but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its required contact information, through such means as FINRA may specify, within 17 business days after the end of each calendar year.
- Each funding portal member must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

5. Proposed Funding Portal Rule 300(e) (Statement of Gross Revenue)

Proposed Funding Portal Rule 300(e) requires each funding portal member each year to report to FINRA, in the manner prescribed by FINRA, the member's gross revenue on Form FP-Statement of Revenue, no later than 60 calendar days following each calendar year-end.⁴⁴ The rule requires that the statement of gross revenue must be prepared in accordance with U.S. Generally Accepted Accounting Principles.

6. Proposed Funding Portal Rule 300(f) (Record of Associated Persons of the Funding Portal Member)

Proposed Funding Portal Rule 300(f) is based in large part on SEA Rule 17a-3(a)(12)(ii) (17 C.F.R. 240.17a-3(a)(12)(ii)), which requires broker-dealers to make and keep current a record listing every associated person of the broker-dealer. FINRA believes that requiring funding portals to keep such a record is prudent both for supervisory and regulatory oversight purposes.⁴⁵ The rule requires each funding portal member to make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding

⁴⁴ The requirement to submit the Statement of Gross Revenue using Form FP-Statement of Revenue is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. Proposed Form FP-Statement of Revenue is set forth in Exhibit 3d of this filing. The Statement of Gross Revenue will be used to determine a funding portal member's annual fees, which FINRA is establishing as part of a separate rulemaking. See note 11 supra.

⁴⁵ Proposed Funding Portal Rule 300(f) is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. FINRA believes the requirement is a useful complement to proposed Rule 404 under the SEC's Regulation Crowdfunding, which sets forth specified records requirements for funding portals but does not include the requirement as to listing associated persons of the funding portal.

portal member where the associated person regularly conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. The rule requires each funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place, which aligns with the retention period that the SEC has prescribed for records that funding portals would have to make and preserve pursuant to proposed Rule 404 under Regulation Crowdfunding.

E. Proposed Funding Portal Rule 800 (Investigations and Sanctions)

1. Proposed Funding Portal Rule 800(a) (Application of FINRA Rule 8000 Series (Investigations and Sanctions) to Funding Portals)

Proposed Funding Portal Rule 800(a) is designed to provide that funding portal members will be subject to specified FINRA rules governing investigations and sanctions. Specifically, the rule provides that, except for FINRA Rules 8110 (Availability of Manual to Customers), 8211 (Automated Submission of Trading Data Requested by FINRA), 8213 (Automated Submission of Trading Data for Non-Exchange-Listed Securities Requested by FINRA) and 8312 (FINRA BrokerCheck Disclosure),⁴⁶ all funding portal members shall be subject to the FINRA Rule 8000

⁴⁶ FINRA does not propose to apply FINRA Rule 8110 as part of the Funding Portal Rules as the rule addresses availability of the complete FINRA Manual and FINRA is not proposing to apply the complete Manual to funding portal members. FINRA Rules 8211 and 8213 address trading data and are not applicable to funding portals by virtue of the limited nature of their business. With respect to FINRA Rule 8312, as discussed below, FINRA is proposing Funding Portal Rule 800(b) as a streamlined version of the rule to apply to funding portal members.

Series, unless the context requires otherwise, provided, however, that:

- the term “member” as used in the FINRA Rule 8000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the term “associated person” as used in the FINRA Rule 8000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the terms “rules” and “FINRA rules” as used in the FINRA Rule 8000 Series shall include the Funding Portal Rules;
- for purposes of FINRA Rule 8210(d):⁴⁷
 - a notice under FINRA Rule 8210 shall be deemed received by the funding portal member to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person who is currently associated with a funding portal member, the rule provides that a notice under FINRA Rule 8210 shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person subject to FINRA’s jurisdiction who was formerly associated with a

⁴⁷ FINRA Rule 8210(d) addresses notices mailed or otherwise transmitted under the rule.

funding portal member, the rule provides that a notice under FINRA Rule 8210 shall be deemed received by the person upon personal service, as set forth in FINRA Rule 9134(a)(1).⁴⁸ The rule further provides that if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person currently associated with the funding portal member has actual knowledge that the funding portal member's address in the SEC Form Funding Portal is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

- (i) the last known business address of the funding portal member as reflected in the SEC Form Funding Portal; and

- (ii) any other more current address of the funding portal member or the person currently associated with the funding portal member known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice; and

- if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person knows that the funding portal member or person is represented by counsel regarding the investigation, complaint,

⁴⁸ FINRA Rule 9134 addresses methods of and procedures for service for purposes of the Rule 9000 Series.

examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the funding portal member or person, and any notice served upon counsel shall be deemed received by the funding portal member or person.

2. Proposed Funding Portal Rule 800(b) (Public Disclosure of Information on Funding Portals)

Proposed Funding Portal Rule 800(b) is a streamlined version of FINRA Rule 8312 (FINRA BrokerCheck Disclosure) and addresses specified information that FINRA shall make available to the public.⁴⁹ Specifically, paragraph (b)(1) of the rule provides that 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 SEC Regulation Crowdfunding, in the form made publicly available by the SEC. The rule provides that, with respect to a former funding portal member, FINRA may provide similar access to the public to the former funding portal member's most recent SEC Form Funding Portal, and any amendments and registration withdrawal requests, as filed with the SEC.

Paragraph (b)(2) of the rule provides that 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

⁴⁹ FINRA has further streamlined the proposed rule vis-à-vis the version published in the Notice in the interest of clarity.

Exchange Act. The rule provides that the funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

Paragraph (b)(3) of the rule provides that, with respect to the information provided pursuant to paragraph (b)(2) of the rule, FINRA shall not make available information reported as a Social Security number, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by FINRA. The rule provides that FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns or information that was reported in error by a funding portal member.

F. Code of Procedure (Proposed Funding Portal Rule 900)

1. Proposed Funding Portal Rule 900(a) (Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals)

Proposed Funding Portal Rule 900(a) is designed to provide that funding portal members will be subject to specified FINRA rules setting forth FINRA's Code of Procedure. Specifically, except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series,⁵⁰ the rule provides that all funding portal members shall be

⁵⁰ The FINRA Rule 9520 Series addresses "eligibility proceedings" in the context of statutory qualifications which, as discussed further below, FINRA is proposing to address under Funding Portal Rule 900(b). FINRA Rule 9557 addresses service of notice to members that are experiencing financial or operational difficulties under net capital or similar financial responsibility requirements. Because funding portals would not be subject to such requirements, Rule 9557 would not be applicable. Similarly, the FINRA Rule 9700 Series addresses the automated

subject to the FINRA Rule 9000 Series, unless the context requires otherwise, provided, however, that:

- the term “member” as used in the FINRA Rule 9000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the term “associated person” as used in the FINRA Rule 9000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the terms “rules” and “FINRA rules” as used in the FINRA Rule 9000 Series shall include the Funding Portal Rules;
- for purposes of FINRA Rule 9217, a funding portal member may be subject to a fine under FINRA Rule 9216(b) with respect to any of the following:⁵¹
 - failure to timely submit amendments to SEC Form Funding Portal;
 - Funding Portal Rule 200(c) (Communications with the Public);
 - Funding Portal Rule 300(a) – failure to maintain adequate written supervisory procedures where the underlying conduct is subject to

quotation, execution or communication systems owned or operated by FINRA, which are outside the scope of funding portal business activity. Accordingly FINRA does not propose to apply the Rule 9700 Series to funding portals.

⁵¹ FINRA Rule 9216(b) sets forth procedures for disposition of specified rule violations designated as minor rule violations pursuant to a plan (referred to as an “MRVP”) declared effective by the SEC in accordance with SEA Section 19(d)(1) (15 U.S.C. 78s(d)(1)) and Rule 19d-1(c)(2) (17 C.F.R. 240.19d-1(c)(2)) thereunder. FINRA Rule 9217 sets forth the rules that are eligible for such disposition. FINRA’s MRVP allows FINRA to impose a fine of up to \$2,500 on any firm it regulates or person associated with a FINRA regulated firm for a minor violation of an eligible rule.

Rule 9217;

- Funding Portal Rule 300(c) – failure to timely file reports;
 - failure to provide or update contact information as required by Funding Portal Rule 300(d);
 - Rule 303(f) of SEC Regulation Crowdfunding – confirmation of transactions; and
 - Rule 404 of SEC Regulation Crowdfunding – failure to make and preserve records in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Funding Portal Rules;
- for purposes of FINRA Rules 9134(b)(1) and 9134(b)(2), the residential or business address, as applicable, as reflected in SEC Form Funding Portal, in lieu of the Central Registration Depository, shall be acceptable;
 - for purposes of FINRA Rule 9134(b)(2), service on a contact employee, or United States agent for service of process, as set forth in SEC Form Funding Portal, in lieu of Form BD, shall be acceptable;
 - for purposes of FINRA Rule 9551(a),⁵² FINRA staff may issue a written notice requiring a funding portal member to file communications with the FINRA Advertising Regulation Department at least ten days prior to use if FINRA staff determines that the member has departed from the standards of Funding Portal Rule 200(c);

⁵² FINRA Rule 9551 addresses expedited proceedings by FINRA for failure to comply with public communication standards.

- for purposes of FINRA Rule 9551(d), the pre-use filing requirement referenced in a notice issued and served under FINRA Rule 9551 shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to FINRA Rule 9559;
- for purposes of proceedings pursuant to FINRA Rule 9810(a),⁵³ proceedings may be initiated with respect to alleged violations of Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and SEA Rule 10b-5 (17 C.F.R. 240.10b-5), Funding Portal Rule 200(a) (if the alleged violation is misuse of investor funds or assets, or based on violations of Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and Funding Portal Rule 200(b).

2. Proposed Funding Portal Rule 900(b) (Eligibility Proceedings)

Proposed Funding Portal Rule 900(b) is a streamlined version of the current FINRA Rule 9520 Series. The rule sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules. Such actions hereinafter are referred to as “eligibility proceedings.” The rule requirements are set forth below.

- ***Definitions (Proposed Funding Portal Rule 900(b)(2))***

Paragraph (b)(2) of the rule sets forth the following definitions:

⁵³ FINRA Rule 9810 addresses initiation of cease and desist proceedings by FINRA for specified violations.

- The term “Application” means FINRA’s Form MC-400 for individuals or Form MC-400A for funding portal members, filed with the Department of Registration and Disclosure (“RAD”).
- The term “disqualified funding portal member” means a funding portal member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the FINRA By-Laws.
- The term “disqualified person” means an associated person of a funding portal member or person seeking to become an associated person of a funding portal member who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 3 of the FINRA By-Laws.
- The term “sponsoring funding portal member” means the funding portal member or applicant for membership pursuant to Funding Portal Rule 110(a) that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

- ***Initiation of Eligibility Proceeding; Department of Member Regulation
Consideration (Proposed Funding Portal Rule 900(b)(3))***

Proposed Funding Portal Rule 900(b)(3)(A) addresses initiation of eligibility proceedings.

- ***Issuance of Notice of Disqualification or Ineligibility***

Proposed Funding Portal Rule 900(b)(3)(A)(i) provides that if

FINRA staff has reason to believe that a disqualification exists or that a funding portal member or person associated with a funding portal member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the funding portal member or applicant for funding portal membership under proposed Funding Portal Rule 110(a). The rule provides that the notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to funding portal members or applicants for funding portal membership when no Application is required pursuant to proposed Funding Portal Rule 900(b)(7), as discussed below.

- ***Notice Regarding a Funding Portal Member***

Proposed Funding Portal Rule 900(b)(3)(A)(ii) provides that a notice issued to a disqualified funding portal member shall state that the disqualified funding portal member may apply for relief by filing an Application or, in the case of a matter set forth in proposed Funding Portal Rule 900(b)(8)(A), as discussed below, a written request for relief, within 10 business days after service of the notice. The rule provides that if the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the membership of the funding portal member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

- ***Notice Regarding an Associated Person***

Proposed Funding Portal Rule 900(b)(3)(A)(iii) provides that a

notice issued regarding a disqualified person to a funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) shall state that such funding portal member or applicant for funding portal membership may file an Application on behalf of itself and such person or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. The rule provides that if the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the funding portal member may not associate or continue to associate with the disqualified person, unless the Department of Member Regulation grants an extension for good cause shown.

○ *Service*

Paragraph (b)(3)(A)(iv) of the proposed rule provides that a notice issued under paragraph (b)(3)(A) of the rule shall be served by facsimile or electronic mail, or pursuant to FINRA Rules 9131⁵⁴ and 9134, as adopted pursuant to proposed Funding Portal Rule 900(a).

• ***Obligation of Funding Portal Member to Initiate Eligibility Proceeding
(Proposed Funding Portal Rule 900(b)(4))***

Proposed Funding Portal Rule 900(b)(4)(A) addresses the obligation of a funding portal member to initiate eligibility proceedings. Specifically, the rule provides that a funding portal member must file an Application or, in the case of a matter set forth in

⁵⁴ FINRA Rule 9131 addresses service of a complaint by FINRA for purposes of the Rule 9000 Series.

proposed Funding Portal Rule 900(b)(8)(A) a written request for relief, with RAD, if the funding portal member determines prior to receiving a notice under paragraph (b)(3)(A) of this Rule that:

- It has become a disqualified funding portal member;
 - A person associated with such funding portal member or whose association is proposed by an applicant for funding portal membership under Funding Portal Rule 110(a) has become a disqualified person; or
 - The funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) wishes to sponsor the association of a person who is a disqualified person.
- ***Withdrawal of Application or Written Request for Relief (Proposed Funding Portal Rule 900(b)(5))***

Proposed Funding Portal Rule 900(b)(5)(A) provides that a funding portal member may withdraw its Application or, as set forth in proposed Funding Portal Rule 900(b)(8)(A) its written request for relief, at any time prior to an appeal by filing a written notice with the Department of Member Regulation and RAD pursuant to FINRA Rules 9135 (Filing of Papers with Adjudicator: Procedure), 9136 (Filing of Papers: Form), and 9137 (Filing of Papers: Signature Requirement and Effect), as adopted pursuant to Funding Portal Rule 900(a). The rule provides that a funding portal member may withdraw its Application after the start of an appeal but prior to the issuance of a decision by the National Adjudicatory Council by filing a written notice with the Department of Member Regulation and the Office of General Counsel pursuant to FINRA Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a).

- ***Ex Parte Communications (Proposed Funding Portal Rule 900(b)(6))***

Proposed Funding Portal Rule 900(b)(6) provides that the prohibitions against ex parte communications set forth in FINRA Rule 9143, as adopted pursuant to Funding Portal Rule 900(a), shall become effective under Funding Portal Rule 900(b) when FINRA staff has initiated the eligibility proceeding and FINRA staff has knowledge that a funding portal member intends to file an Application or written request for relief pursuant to Funding Portal Rule 900(b).

- ***Relief from Eligibility Proceedings (Proposed Funding Portal Rule 900(b)(7))***

Proposed Funding Portal Rule 900(b)(7) provides that a funding portal member is not required to file an Application if:⁵⁵

- The disqualification arises solely from findings in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, the Commodity Futures Trading Commission or a self-regulatory organization, and the sanction is no longer in effect.⁵⁶

⁵⁵ The disqualifications set forth under paragraph (b)(7) of the rule reflect the three additional categories of disqualification that FINRA addressed in 2009, specifically, willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted by the Sarbanes-Oxley Act, and associations with specified other persons subject to statutory disqualification. See Regulatory Notice 09-19 (Eligibility Proceedings) (April 2009). See also Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), 74 FR 17267 (April 14, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR-FINRA-2009-022).

⁵⁶ See proposed Funding Portal Rule 900(b)(7)(A) in Exhibit 5.

- The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(i), and the bar is no longer in effect, provided that there is no final order specified in Exchange Act Section 15(b)(4)(H)(ii), in which case paragraph (b)(7)(C) of the rule, as discussed below, applies.⁵⁷
- The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(ii), and:
 - the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect; or
 - the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered ten or more years ago.⁵⁸
- The disqualification arises solely under Exchange Act Section 3(a)(39)(E), and the disqualified funding portal member or person is subject to the disqualification solely because the member or person has associated with it any person who is known, or in the exercise of reasonable care should be known, to the disqualified member or person to be a person described by subparagraph (A), (B), (C), or (D) of Exchange Act Section 3(a)(39), unless the associated person

⁵⁷ See proposed Funding Portal Rule 900(b)(7)(B) in Exhibit 5.

⁵⁸ See proposed Funding Portal Rule 900(b)(7)(C) in Exhibit 5.

controls such disqualified member or person, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member.⁵⁹

- ***Matters That May Be Approved After the Filing of an Application or Written Request for Relief (Proposed Funding Portal Rule 900(b)(8))***

Paragraph (b)(8)(A) of the proposed rule provides that the Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified funding portal member or a sponsoring funding portal member without the filing of an Application by such disqualified funding portal member or sponsoring funding portal member if a disqualified funding portal member or disqualified person is subject to one or more of the following conditions, but is not otherwise subject to disqualification:

- an injunction as described in Section 15(b)(4)(C) of the Exchange Act that was entered ten or more years prior to the proposed admission or continuance; or
- a request to change the supervisor of a disqualified person.

Paragraph (b)(8)(B) of the rule provides that the Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve, upon the filing of an Application by a disqualified funding portal member or a sponsoring funding portal member and written consent to a heightened supervisory plan, all Applications seeking relief from disqualifications arising under Section 3(a)(39)

⁵⁹ See proposed Funding Portal Rule 900(b)(7)(D) in Exhibit 5.

of the Exchange Act.

Paragraph (b)(8)(B)(i) of the rule provides that, by the submission of a written consent to a heightened supervisory plan, the disqualified funding portal member, sponsoring funding portal member and disqualified person waive:

- the right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;
- any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim bias or prejudgment by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's approval or the supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan; and
- any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, as adopted pursuant to Funding Portal Rule 900(a), in connection with such person's or body's participation in discussions regarding the terms and

conditions of the approval or supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan.

Paragraph (b)(8)(B)(ii) of the rule provides that if the heightened supervisory plan is rejected, the disqualified funding portal member, sponsoring funding portal member, or disqualified person shall be bound by the waivers made under paragraph (b)(8)(B)(i) of the rule for conduct by persons or bodies occurring during the period beginning on the date the heightened supervisory plan was submitted and ending upon the rejection of the heightened supervisory plan and shall have the right to appeal such decision pursuant to proposed Funding Portal Rule 900(b)(11), as discussed below.

- ***Department of Member Regulation Consideration of Applications for New Funding Portal Members (Proposed Funding Portal Rule 900(b)(9))***

Proposed Funding Portal Rule 900(b)(9) provides that in all instances where FINRA receives a Form MC-400 or Form MC-400A under this rule, and such Application is submitted on behalf of an applicant for membership as a funding portal member under Funding Portal Rule 110(a), the Department of Member Regulation shall defer a decision on such Form MC-400 or Form MC-400A until such time as FINRA has issued a determination on the application submitted pursuant to Funding Portal Rule 110(a).

- ***Rights of Disqualified Funding Portal Member, Sponsoring Funding Portal Member, Disqualified Person, and Department of Member Regulation (Proposed Funding Portal Rule 900(b)(10))***

Proposed Funding Portal Rule 900(b)(10)(A) provides that in the event the

Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to Funding Portal Rule 900(b)(8)(A), the disqualified funding portal member or sponsoring funding portal member may file an Application under Funding Portal Rule 900(b)(8)(B). The rule provides that the Department of Member Regulation may require a disqualified funding portal member or sponsoring funding portal member to file an Application with RAD, notwithstanding the provisions of proposed Funding Portal Rule 900(b)(8)(A).

FINRA has revised paragraph (b)(10)(B) of the rule vis-à-vis the proposal as published in the Notice so as to better align the rule with existing provisions for broker-dealer members. Based in large part on FINRA Rule 9522(e)(3), proposed Funding Portal Rule 900(b)(10)(B), as revised, provides that, in the event the Department of Member Regulation does not approve an Application pursuant to Funding Portal Rule 900(b)(8)(B), the Department of Member Regulation shall inform the disqualified funding portal member or sponsoring funding portal member of its decision in writing. Further, as revised, the rule provides that the decision shall explain in detail the reason for denial. The rule states that the disqualified funding portal member or sponsoring funding portal member shall have the right to appeal such decision pursuant to proposed Funding Portal Rule 900(b)(11), as discussed below. If not timely appealed pursuant to paragraph (b)(11) of the rule, the decision issued by the Department of Member Regulation shall constitute final action of FINRA and shall become effective immediately.

- ***Appeal of Department of Member Regulation's Decision to Deny an Application or a Written Request for Relief (Proposed Funding Portal Rule***

900(b)(11))

Paragraph (b)(11) of the proposed rule addresses appeal of the Department of Member Regulation's decision to deny an application or a written request for relief. Based in large part on FINRA Rules 9524 and 9525, FINRA has revised the proposed rule vis-à-vis the proposal as published in the Notice so as to better align the rule with existing provisions for broker-dealer members. As revised, the proposed rule sets forth among other things procedures for a hearing when one is requested, including notice of the hearing, the rights of parties at the hearing, transmission of documents, extensions of time, postponements and adjournments, and requirements as to the hearing record. In addition, FINRA has made other conforming revisions. The specific requirements of the proposed rule as revised are set forth below.

- Notice (Proposed Funding Portal Rule 900(b)(11)(A))

Paragraph (b)(11)(A) of the proposed rule provides that a funding portal member or sponsoring funding portal member may file a written notice of appeal within 14 days after service of a decision issued under Funding Portal Rule 900(b). The rule provides that the notice of appeal shall be filed with the Office of General Counsel, with a copy to the Department of Member Regulation. The notice of appeal shall state with specificity why the appellant believes the Department of Member Regulation's decision is not consistent with the public interest or should otherwise be set aside, and shall state whether a hearing is requested. The notice of appeal shall be signed by the appellant.

- Stay of Decision (Proposed Funding Portal Rule 900(b)(11)(B))

Paragraph (b)(11)(B) of the proposed rule provides that an appeal of the Department of Member Regulation's decision to deny an Application or a written request for relief shall operate as a stay of that decision while the appeal is pending.

- Subcommittee (Proposed Funding Portal Rule 900(b)(11)(C))

Paragraph (b)(11)(C) of the proposed rule provides that after an appellant files a timely appeal, the National Adjudicatory Council or the Statutory Disqualification Committee shall appoint two or more members, who shall be current or former members of the National Adjudicatory Council, Statutory Disqualification Committee, or former Directors or Governors, to form a subcommittee. The rule provides that the subcommittee shall conduct a hearing when one is requested, review the appeal, and recommend a decision to the Statutory Disqualification Committee.

- Notice of Hearing and Rights of Parties at Hearing (Proposed Funding Portal Rule 900(b)(11)(D))

Paragraph (b)(11)(D) of the proposed rule provides that, if a hearing is requested, the hearing shall be held no later than 90 days after the filing of a notice of appeal unless the subcommittee determines that there is good cause shown for extending the time period. The rule provides that the appellant and the Department of Member Regulation shall be notified via mail, email, facsimile, or overnight courier of the location, time, and date of the hearing not less than 14 business days

before the hearing, unless the parties agree to shorten the time period or where good cause has been shown for an expedited proceeding under paragraph (b)(11)(F) of the rule as discussed further below. The appellant and the Department of Member Regulation shall be entitled to be heard in person at a hearing, to be represented by an attorney, and to submit any relevant evidence.

- Withdrawal or Abandonment (Proposed Funding Portal Rule 900(b)(11)(E))

Paragraph (b)(11)(E) of the proposed rule provides that, if an appellant abandons or withdraws the Application, the Department of Member Regulation's decision shall constitute final action by FINRA.

- Expedited Review (Proposed Funding Portal Rule 900(b)(11)(F))

Paragraph 900(b)(11)(F) of the proposed rule provides that where the failure to promptly review a decision to deny an Application would unduly or unfairly harm the funding portal member or sponsoring funding portal member, the subcommittee shall provide an expedited hearing upon a showing of good cause. The subcommittee would have the authority to set deadlines to prepare for the expedited hearing that would be shorter than the dates for a non-expedited review under Funding Portal Rule 900(b)(11)(G).

- Transmission of Documents (Proposed Funding Portal Rule 900(b)(11)(G))

Paragraph (b)(11)(G)(i) of the proposed rule provides that, within

14 days after the filing of a notice of appeal, the Department of Member Regulation shall transmit to the Office of General Counsel, and serve on the appellant to the extent that any such documents have not been previously provided, copies of all documents that were considered in connection with the Department of Member Regulation's decision to deny the Application and an index to the documents.

Paragraph (b)(11)(G)(ii) of the proposed rule provides that, not less than 10 business days before the hearing, the Department of Member Regulation and the appellant shall serve proposed exhibit and witness lists on each other and the Office of General Counsel. The rule provides that the exhibit and witness lists shall be served by email, facsimile or overnight courier.

Paragraph (b)(11)(G)(iii) of the proposed rule provides that, at any time prior to the issuance of its recommendation, the subcommittee may order the parties to supplement the record with any additional information that the subcommittee deems necessary. The rule provides that the subcommittee may also order the appellant and the Department of Member Regulation to file legal briefs.

○ Extensions of Time, Postponements, and Adjournments (Proposed Funding Portal Rule 900(b)(11)(H))

Paragraph (b)(11)(H) of the proposed rule provides that the subcommittee may shorten any time limits prescribed by these rules for the filing of any papers after obtaining consent of all the parties, and may

postpone or adjourn any hearing. The rule provides that the subcommittee may extend any time limits prescribed by these rules for the filing of any papers.

- Recordation of Hearing (Proposed Funding Portal Rule 900(b)(11)(I))

Paragraph (b)(11)(I) of the proposed rule provides that the hearing shall be recorded and a transcript prepared by a court reporter.

- Record (Proposed Funding Portal Rule 900(b)(11)(J))

Paragraph (b)(11)(J) of the proposed rule provides that the record shall consist of:

- the decision issued under Funding Portal Rule 900(b);⁶⁰
- all documents relied upon in issuing the decision issued under Funding Portal Rule 900(b);⁶¹
- the notice of appeal;⁶²
- any other submissions by the appellant and the Department of Member Regulation;⁶³
- any evidence considered at the hearing;⁶⁴ and
- the transcript of the hearing and any corrections thereto.⁶⁵

⁶⁰ See proposed Funding Portal Rule 900(b)(11)(J)(i) in Exhibit 5.

⁶¹ See proposed Funding Portal Rule 900(b)(11)(J)(ii) in Exhibit 5.

⁶² See proposed Funding Portal Rule 900(b)(11)(J)(iii) in Exhibit 5.

⁶³ See proposed Funding Portal Rule 900(b)(11)(J)(iv) in Exhibit 5.

⁶⁴ See proposed Funding Portal Rule 900(b)(11)(J)(v) in Exhibit 5.

⁶⁵ See proposed Funding Portal Rule 900(b)(11)(J)(vi) in Exhibit 5.

- Evidence Not Admitted (Proposed Funding Portal Rule 900(b)(11)(K))

Paragraph (b)(11)(K) of the proposed rule provides that evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the Office of General Counsel, as custodian of the record, until the date when FINRA's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

- Recommendation (Proposed Funding Portal Rule 900(b)(11)(L))

Paragraph (b)(11)(L) of the proposed rule provides that, on the basis of the record, the subcommittee shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the subcommittee, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council.

- Decision (Proposed Funding Portal Rule 900(b)(11)(M))

Paragraph (b)(11)(M) of the proposed rule provides that, after considering all the matters presented in the request for relief, the Statutory Disqualification Committee's recommendation, the public interest and the protection of investors, the National Adjudicatory Council may affirm, modify, or reverse in writing the Department of Member Regulation's decision. The rule provides that the National Adjudicatory Council shall provide its proposed decision to the FINRA Board. If the FINRA Board

does not call the decision for review, the decision shall be served pursuant to Funding Portal Rule 900(b)(3)(A)(iv) and shall constitute final action of FINRA. A decision to affirm the Department of Member Regulation's decision shall be effective immediately. A decision to approve the Application shall be effective after the SEC issues an order or acknowledgement letter, as the case may be.

- ***Discretionary Review by the FINRA Board (Proposed Funding Portal Rule 900(b)(12))***

- Call for Review by the FINRA Board (Proposed Funding Portal Rule 900(b)(12)(A))

Paragraph (b)(12)(A) of the proposed rule provides that a Governor may call a proposed National Adjudicatory Council decision regarding an eligibility proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b)(12)(B) of the rule, as discussed below.

- 15 Day Period; Waiver (Proposed Funding Portal Rule 900(b)(12)(B))

Paragraph (b)(12)(B) of the proposed rule provides that a Governor shall make his or her call for review not later than the next meeting of the FINRA Board that is at least 15 days after the date on which the FINRA Board receives the proposed written decision of the National Adjudicatory Council. The rule provides that by a unanimous vote of the FINRA Board, the FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the FINRA Board then in office, the

FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

- Review at Next Meeting (Proposed Funding Portal Rule 900(b)(12)(C))

Paragraph (b)(12)(C) of the proposed rule provides that if a Governor calls an eligibility proceeding for review within the period prescribed in paragraph (b)(12)(B) of the rule, the FINRA Board shall review the eligibility proceeding not later than the next meeting of the FINRA Board. The FINRA Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

- Decision of FINRA Board, Including Remand (Proposed Funding Portal Rule 900(b)(12)(D))

Paragraph (b)(12)(D) of the rule provides that, after review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the FINRA Board may remand the eligibility proceeding with instructions.

- Issuance of Decision (Proposed Funding Portal Rule 900(b)(12)(E))

Paragraph (b)(12)(E) of the proposed rule provides that the FINRA Board shall issue and serve its written decision on the disqualified funding portal member, sponsoring funding portal member, or disqualified person, and the Department of Member Regulation pursuant to FINRA Rules 9132 and 9134, as adopted pursuant to proposed Funding Portal Rule 900(a). The rule provides that the decision shall constitute the final action of

FINRA, unless the FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. The rule provides that a decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC-ordered sanctions, an order.

- **Application to SEC for Review (Proposed Funding Portal Rule 900(b)(13))**

Proposed Funding Portal Rule 900(b)(13) provides that the right to have any action taken pursuant to this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The rule provides that filing of an application for review shall not stay the effectiveness of final action by FINRA, unless the SEC otherwise orders.

- **G. Arbitration and Mediation (Proposed Funding Portal Rule 1200)**

Proposed Funding Portal Rule 1200(a) is designed to provide that funding portal members will be subject to the FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure), unless the context requires otherwise. The rule provides that:

- the term “member” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the term “associated person” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “associated

person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b);

- the terms “rules” and “FINRA rules” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include the Funding Portal Rules; and
- the term “customer” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include investors as such term is used throughout the Funding Portal Rules.

Paragraph (b) of the rule addresses predispute arbitration agreements for investor accounts. The rule is a streamlined version of current FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Agreements). Paragraph (b)(1) of the rule provides that any predispute arbitration clause must be highlighted and must be immediately preceded by the following language in outline form:

“This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party’s ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration

than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.”

Paragraph (b)(2)(A) of the rule provides that, in any agreement containing a predispute arbitration agreement, there must be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement must also indicate at what page and paragraph the arbitration clause is located. Paragraph (b)(2)(B) provides that, within 30 days of signing, a copy of the agreement containing any such clause must be given to the investor and the funding portal member must retain proof of delivery or of the investor’s acknowledgement of receipt.

Paragraph (b)(3)(A) of the rule provides that, within ten business days of receipt of the investor’s request, a funding portal member must provide an investor with a copy of any predispute arbitration clause or investor agreement executed between the investor

and the funding portal member. Paragraph (b)(3)(B) provides that, upon request by an investor, a funding portal member must provide the investor with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

Paragraph (b)(4) of the rule provides that no predispute arbitration agreement shall include any condition that:

- limits or contradicts the rules of any self-regulatory organization;
- limits the ability of a party to file any claim in arbitration;
- limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;
- limits the ability of arbitrators to make any award.

Paragraph (b)(5) of the rule provides that, if an investor files a complaint in court against a funding portal member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the funding portal member and the investor, the funding portal member may seek to compel arbitration of the claims that are subject to arbitration. If the funding portal member seeks to compel arbitration of such claims, the funding portal member must agree to arbitrate all of the claims contained in the complaint if the investor so requests.

Paragraph (b)(6) of the rule provides that all agreements must include a statement that “No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted

out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the investor is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

H. Notification to FINRA in Connection with the JOBS Act (Proposed Funding Portal Rule 4518)

As discussed earlier, under Section 302 of the JOBS Act, an intermediary that engages in transactions involving the offer or sale of securities pursuant to the crowdfunding exemption is required to register with the SEC as a funding portal or broker and to register with an applicable self-regulatory organization.⁶⁶ As such, the statute contemplates activity by registered brokers pursuant to Title III of the JOBS Act, subject to specified conditions. In anticipation that registered broker members of FINRA may intend to act as intermediaries for transactions in connection with the crowdfunding exemption, FINRA is proposing to adopt, as part of the FINRA rulebook, new FINRA Rule 4518. The rule would apply to registered broker members. The rule provides that a FINRA member shall notify FINRA, in a manner prescribed by 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 as defined pursuant to Rule

⁶⁶ See Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. § 77d-1(a)(1) and (2)).

300(c)(2) of SEC Regulation Crowdfunding.

Proposed FINRA Rule 4518 is an addition to the proposal vis-à-vis the proposed rule change as published in the Notice. FINRA believes the requirement is a useful complement to the Funding Portal Rules, given that it would enable FINRA to keep accurate track as to which of its registered broker members, if any, are engaging in activity in connection with Title III of the JOBS Act and thereby assist FINRA in carrying out its regulatory responsibilities.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Act, as amended by the JOBS Act, defines the permissible business activities of funding portals and requires that funding portals must become members of a national securities association. FINRA is the only registered national securities association. The Act requires that FINRA examine for and enforce against registered funding portals rules written specifically for registered funding portals.

FINRA believes that the proposal is consistent with the Act because FINRA has

⁶⁷ 15 U.S.C. 78o-3(b)(6).

written the proposed rules specifically for funding portals, seeking to streamline the rules or otherwise appropriately modify them to reflect the limited nature of funding portal business, as set forth in the Act.

The proposed rules address general standards applicable to funding portals (Funding Portal Rule 100), the member application process for funding portals (Funding Portal Rule 110(a)), and business conduct, including standards of commercial honor and principles of trade (Funding Portal Rule 200(a)), prohibitions against the use of manipulative, deceptive or other fraudulent devices (Funding Portal Rule 200(b)) and communications with the public (Funding Portal Rule 200(c)). The proposed rules further address supervisory systems (Funding Portal Rule 300(a)), designation of an executive representative (Funding Portal Rule 300(b)), reporting requirements (Funding Portal Rule 300(c)), contact information requirements (Funding Portal Rule (300(d)), submission of revenue statements to FINRA (Funding Portal Rule 300(e) and requirements as to making and keeping current records listing associated persons of the funding portal (Funding Portal Rule 300(f)). In addition, the rules address the application of FINRA's investigations and sanctions procedures to funding portals (Funding Portal Rule 800(a)), public disclosure by FINRA of information on funding portals (Funding Portal Rule 800(b)), the application of FINRA's Code of Procedure to funding portals (Funding Portal Rule 900(a)), eligibility proceedings in connection with statutory disqualifications under the Act (Funding Portal Rule 900(b)), the application of FINRA's Arbitration and Mediation Procedures to funding portals (Funding Portal Rule 1200(a) and rules governing predispute arbitration agreements for investor accounts (Funding Portal Rule 1200(b)).

Consistent with the Act, the proposed rules prohibit fraudulent and manipulative acts and practices and require that funding portal members observe just and equitable principles of trade, thereby conducing to the protection of investors. The proposal is consistent with the public interest because the streamlined requirements as set forth in the proposal, considered in combination with and in view of the restrictions imposed on funding portal business by the Act, are consistent with the Congressional intent of the JOBS Act, which sought to minimize regulatory burdens on funding portals and thereby enable them to play a role in increasing American job creation and economic growth through the new capital raising methods of crowdfunding.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Act, as amended by the JOBS Act, limits the permissible business activities of funding portals and requires that funding portals must become members of a national securities association. FINRA is the only registered national securities association. The Act requires that FINRA examine for and enforce against registered funding portals rules written specifically for funding portals. As such, FINRA has designed the proposed rules to streamline or otherwise appropriately modify existing FINRA rules to reflect the limited scope of business activity permitted to funding portals under the JOBS Act.

FINRA believes that the streamlined approach should minimize the potential costs and burdens on prospective funding portal members at this early stage of development of funding portal business, thereby helping to effectuate the Congressional intent to enable funding portals to play a role in increasing American job creation and economic growth

through the new capital raising methods of crowdfunding. Further, FINRA believes the streamlined approach is appropriate given that regulatory experience with funding portals is at an early stage. Following are several requirements that FINRA has streamlined for funding portals vis-à-vis requirements that currently apply to broker-dealers:

- The proposed membership application process (MAP) under Funding Portal Rule 110(a) shortens the time frame for the Department of Member Regulation to provide a decision on a funding portal MAP to 60 days, versus 180 days under the broker-dealer MAP rules. FINRA believes that this shortened time frame is appropriate both in view of the limited nature of funding portal business and in the interest of enabling funding portals to begin their operations expeditiously, thereby supporting a basic purpose of the JOBS Act.
- The proposed MAP streamlines and consolidates, from 14 to five, the NASD Rule 1010 Series standards for granting or denying a funding portal's membership application. FINRA believes that this is consistent with the rationale underlying the shortened time frame for the funding portal MAP, as discussed above, which should ameliorate potential burdens on funding portal members.
- The proposed Form FP-NMA and Form FP-CMA require significantly less information than the broker-dealer counterpart forms, which FINRA believes is consistent with the limited scope of business to be conducted by funding portals. FINRA believes that, similar to the shortened MAP time frame and streamlined standards for granting or denying an application, this again

ameliorates potential burdens on funding portal members.

- The proposal imposes no broker-dealer equivalent licensing or examination requirement on associated persons of funding portal members. FINRA believes that imposing examination and licensing requirements on funding portal members at this stage is not necessary in light of the limited activities of funding portals. However, as FINRA gains experience under the proposed rules, FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is merited.
- The proposal as set forth in Regulatory Notice 13-34 would have required funding portal members to maintain fidelity bond coverage. As discussed earlier, FINRA is not proposing at this time a fidelity bond requirement. FINRA will monitor developments in this area and determine whether a subsequent rulemaking is merited.
- FINRA is not proposing at this time net capital or similar financial responsibility requirements for funding portals. FINRA believes that this approach is appropriate at this time in view of the limited nature of funding portal business, in particular the JOBS Act prohibition against funding portals holding, managing, possessing, or otherwise handling investor funds and securities. Again, however, FINRA will monitor developments in this area and determine whether a subsequent rulemaking is merited.

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rules, the regulatory objective of the rulemaking, the economic baseline of analysis, and the economic impacts.

A. Need for the Rules

Section 3(h)(2) of the Exchange Act,⁶⁸ as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals.

Under Title III of the JOBS Act, a funding portal is a new type of intermediary the business activities of which are of limited scope, as defined by the JOBS Act, relative to entities that register as brokers. Among other things, the JOBS Act adds Section 4(a)(6) to the Securities Act,⁶⁹ which creates an exemption (the “crowdfunding exemption”) from registration requirements under the Securities Act for securities offered and sold pursuant to the crowdfunding exemption. Broadly, the crowdfunding exemption permits an issuer to offer and sell up to \$1 million in securities over a 12-month period. The amount of any such security sold to an investor by an issuer is not permitted to exceed specified thresholds. Further, the issuer must comply with other specified requirements under the JOBS Act and Commission rules. Any offering pursuant to the crowdfunding exemption must be conducted through a broker or a funding portal that is registered with the SEC.

Under the JOBS Act, a funding portal must become a member of a national securities association that is registered under Section 15A of the Exchange Act. FINRA is the only national securities association that is registered under Section 15A of the Exchange Act.

⁶⁸ 15 U.S.C. 78c(h)(2).

⁶⁹ 15 U.S.C. 77d(a)(6).

On October 23, 2013, the SEC proposed rules⁷⁰ to require registration of funding portals and to implement the provisions of Title III of the JOBS Act. Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding as adopted by the SEC and to apply for FINRA membership.

B. Regulatory Objective

The crowdfunding exemption is designed to help provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The exemption creates a regulatory pathway for funding portals to facilitate the offer and sale of securities, as registered funding portals, without being required to register with the SEC as brokers,⁷¹ provided they comply with specified limitations on their business activity.⁷²

FINRA's proposal aims to create a streamlined set of regulations for funding portals with rules that reflect the limited scope of activity permitted by funding portals while also maintaining investor protection.

C. Economic Baseline

In the absence of FINRA's Funding Portal Rules, intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding

⁷⁰ See note 7 supra.

⁷¹ Exchange Act Section 3(h)(1) (15 U.S.C. 78c(h)(1)) directs the Commission by rule to exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under Exchange Act Section 15(a)(1) (15 U.S.C. 78o(a)(1)), provided that the funding portal: (1) remains subject to the examination, enforcement and other rulemaking authority of the Commission; (2) is a member of a registered national securities association; and (3) is subject to other requirements that the Commission determines appropriate.

⁷² See note 5 supra.

exemption would be required to register with the SEC as brokers. The FINRA rules for registered brokers are intended to address a wider range of activities than is permissible to funding portals, and would place restrictions and costs not associated with such firms' crowdfunding activities. If all crowdfunding intermediaries were subject to the full requirements that apply to registered brokers, there might be several unintended consequences. First, the regulatory costs to operate the crowdfunding intermediary would likely be high, potentially restricting the number of registered crowdfunding intermediaries. These costs would include, but are not limited to, capital requirements, compliance costs and other restrictions on activities. Second, and relatedly, higher compliance costs may limit the activities of those crowdfunding intermediaries that do choose to register as these may restrict financial and other available resources. Third, limited numbers of registered crowdfunding intermediaries may reduce competition in the crowdfunding market and lead to less efficient capital allocation.

In addition to crowdfunding intermediaries, the absence of the proposed rules may also have an impact on: issuers, typically startups and small businesses seeking to raise capital by issuing securities; investors that purchase or may consider purchasing securities in such offerings; and other capital providers, broker-dealers and finders that currently participate in private offerings.

For the issuers seeking to raise capital through securities-based crowdfunding in reliance on the crowdfunding exemption, limited numbers of registered crowdfunding intermediaries may result in higher capital raising costs, decreased opportunities for selling securities through a given registered funding portal, or an aggregate reduction in the capacity of registered crowdfunding intermediaries. Higher regulatory costs to

registered intermediaries may also be passed on to issuers. All of these impacts would collectively make it more difficult for startups and small businesses to efficiently find capital for their operations.

Limited numbers of registered intermediaries may also limit investor access to securities-based crowdfunding offerings. In addition, higher capital raising costs to issuers and higher regulatory costs to registered intermediaries could be passed on to potential investors.

The absence of the proposed Funding Portal Rules also might have an effect on broker-dealers and finders participating in private offerings. As discussed above, in the absence of FINRA's Funding Portal Rules, issuers intending to raise capital in reliance on the crowdfunding exemption may face higher costs. Some of these issuers may instead choose to raise capital through private offerings with the assistance of broker-dealers and finders. This could increase the revenue of finders and broker-dealers in the market for private offerings, but less competition in the fundraising market and greater restrictions on participation of investors may lead to less efficient allocation of capital.

D. Economic Impacts

The proposed rules are intended to provide investors with appropriate protections by applying the relevant controls and oversight to the limited activities of funding portals. FINRA recognizes that there are potential costs associated with compliance with the proposed rules. Prospective funding portal members will need to become members of FINRA and establish compliance procedures to comply with the proposed rules, both on an initial and ongoing basis. The proposed rules may also have an impact on other market participants such as issuers and investors. Benefits of the proposed rules may

include greater competition among crowdfunding intermediaries, better market oversight, and investor protection for those investing in offerings made through funding portals. Costs and benefits associated with FINRA's proposed rules are only a subset of the costs and benefits associated with securities-based crowdfunding regulations. Regulatory outcomes will depend on many other factors including the SEC rules.

1. The SEC's Economic Analysis

The SEC's Regulation Crowdfunding Proposal⁷³ includes a detailed economic analysis that estimates the potential costs and benefits to various market participants. However, the scope of the SEC's proposed Regulation Crowdfunding is broader than the scope of FINRA's proposed rules. Regulation Crowdfunding, as proposed, prescribes rules governing the offer and sale of securities under the new crowdfunding provisions. It also provides a framework for the regulation of registered funding portals and brokers that issuers are required to use as intermediaries. In addition, it exempts securities sold pursuant to the crowdfunding exemption from registration requirements under the Securities Act. As a result, the SEC's economic analysis examines the impacts of securities-based crowdfunding in reliance on the crowdfunding exemption as a new fundraising channel. For example, it estimates the costs for registered brokers, and brokers that prospectively would register, to comply with the various requirements to engage in securities-based crowdfunding transactions. The SEC's economic analysis also estimates the costs for an intermediary to develop a platform to engage in such transactions.

⁷³ See note 7 supra.

In contrast, FINRA has written the proposed rules specifically for funding portals. In the absence of FINRA's Funding Portal Rules, securities-based crowdfunding in reliance on the crowdfunding exemption is still possible under the SEC rules, though intermediaries intending to facilitate such transactions would need to register as brokers.

2. Benefits

FINRA's proposed Funding Portal Rules will make it possible for intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption to register as funding portals, which is a lower cost alternative to registering as brokers. The proposed rules encourage funding portals to become members of FINRA as they provide a streamlined set of regulations that are tailored to the activities of funding portals and avoid the imposition of burdens and costs not associated with permissible funding portal activity. The proposed rules will likely increase the number of registered crowdfunding intermediaries, promote competition, and in turn potentially reduce costs to issuers and investors.

Because funding portals will be required to comply with both the SEC's and FINRA's rules if adopted, FINRA's Funding Portal Rules will create additional regulatory oversight of registered funding portals and improve the SEC's ability to effectively regulate registered funding portals' activities. FINRA believes that the proposed rules will reduce the risk of misconduct and fraud and help create a healthy marketplace in which issuers are more comfortable using securities-based crowdfunding to raise capital and investors are more willing to participate.

3. Costs to Funding Portals

FINRA recognizes that there will be costs to prospective funding portal members

associated with each major set of provisions below. Because the proposed Funding Portal Rules have been streamlined to reflect the limited scope of activity permitted to funding portals, the compliance costs would be higher in the absence of the proposed rules where crowdfunding intermediaries would have to register as broker-dealers.

a. Registration and Other Costs

Certain costs to prospective funding portals are estimated in the economic impact analysis of FINRA's proposed rule change to adopt Section 15 of Schedule A to the FINRA By-Laws governing fees for funding portal members.⁷⁴

b. Other Compliance Costs: Major Sets of Provisions

Funding Portal Conduct

Under proposed Funding Portal Rule 200, prospective funding portal members would need to develop and implement policies and processes designed to meet high standards of commercial honor and principles of trade, prevent use of manipulative, deceptive or other fraudulent devices, and comply with the specified proposed requirements on communications with the public.

Funding Portal Compliance

Proposed Funding Portal Rule 300(a) requires that each funding portal member establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules.

Proposed Funding Portal Rule 300(b) requires that each funding portal member must designate to FINRA an executive representative.

⁷⁴ See note 11 supra.

Proposed Funding Portal Rule 300(c) requires funding portal members to report to FINRA (and sets forth the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events. Funding portal members would need to establish policies and processes to detect the events that are required to be reported and ensure prompt reporting of the events.

Proposed Funding Portal Rule 300(d) is designed to require funding portal members to report to FINRA all contact information required by FINRA through such means as FINRA may specify.

Proposed Funding Portal Rule 300(e) requires each funding portal member to report to FINRA the member's gross revenue on Form FP-Statement of Revenue.

Proposed Funding Portal Rule 300(f) requires each funding portal member to make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding portal member where the associated person regularly conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. The rule requires a funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place.

The proposal would not require funding portals to implement an anti-money laundering program at this time. Alternatively, broker-dealers that operate a platform under the proposed rules would continue to have anti-money laundering program obligations, and those obligations would extend to any platform that they operate. While this represents an additional cost to registered broker-dealers over new entrants that

register strictly as funding portals, these costs are likely small because broker-dealers are already required to have in place all the requirements for an anti-money laundering program.

Investigations and Sanctions

Proposed Funding Portal Rule 800(a) provides that except for FINRA Rules 8110, 8211, 8213 and 8312, all funding portal members shall be subject to the FINRA Rule 8000 Series unless the context requires otherwise.

Proposed Funding Portal Rule 800(b) addresses specified information that FINRA shall make available to the public. Proposed Funding Portal Rule 800(b)(2) provides that FINRA shall make available to the public information filed by a funding portal member 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)⁷⁵ of the Exchange Act, and that the funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

Application of FINRA Rule 9000 Series to Funding Portals

Proposed Funding Portal Rule 900(a) provides that except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series, all funding portal members shall be subject to the FINRA Rule 9000 Series unless the context requires otherwise.

Proposed Funding Portal Rule 900(b) sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a

⁷⁵ 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Act sets forth the definition of “statutory disqualification.”

statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules.

Arbitration and Mediation

Proposed Funding Portal Rule 1200(a) is designed to provide that funding portal members will be subject to the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series, unless the context requires otherwise. Proposed Funding Portal Rule 1200(b) addresses predispute arbitration agreements for investor accounts.

c. Estimate of Costs

FINRA understands that the staffing and scope of the organization necessary to provide crowdfunding services may be comparable to that of a small broker-dealer. As such, FINRA looks to its experience with a sample of smaller broker-dealers to estimate the potential costs associated with the proposed rules. The sample firms do not appear to have a heavy investment in dedicated compliance infrastructure. For example, the designated contacts of these firms for FINRA tend to be a managing principal, who often serves several other roles such as executive representative, anti-money laundering representative, and continuing education representative. Required, routine compliance activities (such as annual certifications, email review, employee trading account reviews, etc.) are generally performed by these principals. In several instances, a firm will rely on a third-party compliance consulting firm to help with its general compliance functions. Several of the sample firms employ a model where their financial and operations principals are employed off-site, work part time or hold multiple registrations with

different member firms. FINRA estimates that less than 50% of one internal person's time is typically spent on compliance activities at each of these firms. FINRA understands from a small sample of these firms that they currently pay \$1,000 to \$1,500 per month for compliance consulting services.

FINRA also understands that there are a few member firms that already offer private placement platforms for accredited investors. FINRA understands from various reports that these types of firms may have two full-time compliance officers and spend about \$100,000 to \$150,000 annually on ensuring that all regulations are followed. FINRA believes these estimates are likely for the full scope of broker-dealer activity and include the costs associated with compliance activities not covered by the rule proposal, and thus reflects compliance costs for activities beyond the scope of the permitted business activities of funding portals.

4. Costs to FINRA

FINRA has identified costs that it would likely incur as a result of the proposed rules. Specifically, FINRA needs to adapt its current regulatory infrastructure to manage regulatory processes for funding portals, including regulatory support to members and potential challenges to its decisions. To minimize these burdens, FINRA intends to use as much as possible of its in-place systems and processes.

5. Impact on Competition

In the absence of FINRA's Funding Portal Rules, intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption are required to register with the SEC as brokers. As shown by the SEC's economic analysis in the Regulation Crowdfunding Proposal, the compliance cost

associated with broker registration is expected to exceed the compliance cost associated with funding portal registration. By appropriately limiting the rule set and attendant compliance costs to match the permitted business activities of funding portals, FINRA's Funding Portal Rules will likely allow more registered intermediaries in the market and promote competition in the provision of crowdfunding services among funding portals and broker-dealers.

As noted above, funding portals may serve as a substitute for some private offerings currently offered through broker-dealers under other exemptions from registration, such as Regulation D (17 C.F.R. 230.500 through 230.508). By enabling prospective funding portals to become members of FINRA and thereby engage in funding portal business, the proposed rules may provide a more efficient form of capital raising by issuers, resulting in a loss of underwriting business in these other private offering platforms. FINRA first notes that these private offerings serve only as a limited substitute for offerings pursuant to the crowdfunding exemption, as they have significant limitations on investor participation that make them inappropriate for many of the investments that could be made available under the crowdfunding exemption. Secondly, FINRA notes that any competitive impacts that might arise from substitution across platforms is mitigated by the ability of any broker-dealer to offer a crowdfunding platform or register a funding portal affiliate, and thus compete to retain the business.

Increasing competition among financial intermediaries who might assist startups and small businesses in obtaining capital will likely lead to lower costs for some issuers, which may enable more startups and small businesses to rely on securities-based crowdfunding as a new source of capital. An increased number of issuers in the

fundraising market may promote competition and efficient allocation of capital among crowdfunding issuers.

Increased competition among crowdfunding intermediaries and issuers should also lead to more investment opportunities and lower costs for investors. More investors and thus more capital may be made available to startups and small businesses, helping to achieve the regulatory objective of the crowdfunding provisions of the JOBS Act.

6. Alternatives

As discussed above, FINRA understands that under the SEC's proposed rules, securities-based crowdfunding pursuant to the crowdfunding exemption can occur in brokers that are members of a self-regulatory organization. As such, FINRA considered applying its full rule set to intermediaries providing crowdfunding services. FINRA determined that this approach would impose costs not associated with the activities of the intermediaries and would likely have negative consequences for market efficiency and competition. FINRA also considered the alternative of requiring persons associated with funding portal members to register with FINRA and decided it would not be necessary at this early stage in light of the limited activities of funding portals. As FINRA gains experience in regulating funding portal member activities, FINRA will reassess the alternative based on the nature and scope of the business activities of funding portals.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The proposed rule change was published for comment in Regulatory Notice 13-34 (October 2013) (the "Notice"). Seven comments were received in response to the Notice.

A copy of the Notice is attached as Exhibit 2a. A list of commenters⁷⁶ is attached as Exhibit 2b. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

Some commenters expressed concerns that the rules as proposed in the Notice would impose too many requirements and, in combination with the requirements set forth in the SEC's Regulation Crowdfunding Proposal, would be costly and burdensome for prospective funding portals.⁷⁷ In contrast, other commenters expressed concern that the proposal should impose more requirements such as those that apply to current broker-dealer members or should include other requirements or specified guidelines for purposes of oversight of funding portal activities.⁷⁸ Commenters' specific suggestions are discussed below.

A. Fidelity Bond

As discussed earlier, the proposal as published in the Notice would have required that funding portal members maintain fidelity bond coverage. Two commenters suggested that FINRA should eliminate or tailor the proposed rule.⁷⁹ One of the commenters suggested that, because the JOBS Act prohibits funding portals from holding, managing, possessing or otherwise handling investor funds or securities, funding portals pose limited risk in this area and the fidelity bond requirement would impose an

⁷⁶ All references to commenters are to the commenters as listed in Exhibit 2b.

⁷⁷ CyberIssues, Heritage and Polanco.

⁷⁸ FSA Institute, FSI, NASAA and Wulff.

⁷⁹ CyberIssues and Heritage.

unnecessary cost on funding portals.⁸⁰ One of the commenters suggested that, to help save on premiums for prospective funding portals, fidelity bond coverage should not be required until a funding portal member's membership application is approved.⁸¹ On the other hand, two commenters suggested greater stringency in this area.⁸² One commenter suggested that the proposed fidelity bond requirement would not be sufficient for purposes of oversight and that the proposed requirement should include financial responsibility requirements.⁸³ One commenter suggested that the proposal should be revised to include fines for failure to maintain adequate fidelity bonds.⁸⁴

In response, as discussed earlier, FINRA is not proposing the fidelity bond requirement as part of this rulemaking. FINRA believes that this approach is appropriate in the interest of reducing potential burdens on prospective funding portal members given the limited nature of funding portal business and given that regulatory experience with funding portals is developing.⁸⁵

⁸⁰ Heritage.

⁸¹ CyberIssues.

⁸² NASAA and Wulff.

⁸³ Wulff.

⁸⁴ NASAA.

⁸⁵ Similarly, given the limited nature of funding portal business, in particular the prohibition against funding portals holding, managing, possessing or otherwise handling investor funds or securities, and given that funding portal business is at an early stage of development, FINRA is not proposing net capital or similar financial responsibility requirements for funding portal members at this time. As discussed earlier, FINRA will monitor the development of this area and determine whether a subsequent rulemaking regarding fidelity bonds or other financial responsibility requirements is merited.

B. Anti-Money Laundering Program

As discussed earlier, the proposal as published in the Notice included a proposed requirement that funding portal members implement a written anti-money laundering program. Two commenters opposed the proposed requirement.⁸⁶ One suggested that the anti-money laundering rules are too complex and expensive to comply with, and that the rule is unnecessary because funding portals are prohibited from holding, managing, possessing or otherwise handling investor funds or securities and are thereby not in a position to facilitate money laundering.⁸⁷ One commenter suggested that imposing the requirement on funding portals would be duplicative of functions already performed for instance by institutions where investor funds would be held in escrow.⁸⁸ On the other hand, one commenter expressed support for the proposed requirement.⁸⁹

In response, as discussed earlier, the BSA and the implementing regulations thereunder apply to brokers and dealers in securities that are registered or required to be registered with the Commission. The BSA does not apply to funding portals at this time. Accordingly, FINRA is not proposing an anti-money laundering requirement at this time.

C. Additional Specific Comments

1. Central Registration Depository

One commenter suggested that the proposal should expressly mandate that funding portal members file the SEC's Form Funding Portal and all related forms through

⁸⁶ CyberIssues and Heritage.

⁸⁷ Heritage.

⁸⁸ CyberIssues.

⁸⁹ CFA Institute.

the Central Registration Depository, similar to current FINRA Rule 1010(a).⁹⁰ In response, FINRA believes that it is sufficient, and consistent with the need for regulatory flexibility, that the proposal provides for submission of specified information by means and format prescribed by FINRA.⁹¹ FINRA is in the process of developing systems for submission of specified information tailored to prospective funding portal members which, consistent with the Funding Portal Rules, FINRA will prescribe prior to the implementation of the proposal.

2. Associated Persons of a Funding Portal Member

One commenter suggested that FINRA should narrow the proposed definition of associated person of a funding portal member as set forth under proposed Funding Portal Rule 100(b).⁹² The commenter suggested excluding from the definition employees of a funding portal whose functions exclusively relate to providing various services to issuers. In response, FINRA notes that the proposed definition is largely based on the current definition under the FINRA By-Laws that applies to broker-dealers and is meant to ensure among other things that the specified persons are subject to FINRA rules. FINRA notes that services that funding portals provide to issuers will potentially be an important component of the business model of many funding portals. Accordingly, FINRA does not propose to modify the definition.

Two commenters suggested that FINRA should institute examination and

⁹⁰ NASAA.

⁹¹ See, e.g., proposed Funding Portal Rule 110(a)(3)(A), regarding submission of Form FP-NMA, and proposed Funding Portal Rule 110(a)(4)(B), regarding submission of Form FP-CMA.

⁹² CyberIssues.

licensing requirements for at least some associated persons of funding portal members.⁹³

In response, FINRA notes that the funding portal business is at an early stage of development. Further, as discussed earlier, FINRA notes that the scope of activities permitted to funding portals is limited under the JOBS Act. Accordingly, FINRA is not imposing examination and licensing requirements on associated persons of funding portals at this time. However, as FINRA gains experience under the proposed rules, FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is merited.

3. Application of Additional Rules

Two commenters suggested that FINRA should apply to funding portal members additional rules from the FINRA rulebook that currently apply to broker-dealer members or that FINRA should duplicate, within the proposed Funding Portal Rules, standards adopted by the SEC in Regulation Crowdfunding.⁹⁴ One commenter proffered several current FINRA rules governing broker-dealer members that the commenter suggested should be replicated within the proposed Funding Portal Rules to address potential conflicts of interest, such as the prohibition against guarantees and sharing in accounts under FINRA Rule 2150, as well as elements under FINRA Rule 2210 (Communications with the Public), 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

⁹³ NASAA and Wulff.

⁹⁴ CFA Institute and NASAA.

Arrangements).⁹⁵ The commenter further suggested that FINRA should adopt a distinct recordkeeping rule for funding portal members over and above the recordkeeping rule for funding portals adopted by the SEC.⁹⁶ One commenter suggested that the proposed Funding Portal Rules should duplicate rule language in the SEC's Regulation Crowdfunding aimed at limiting, in conformity with requirements of Title III of the JOBS Act,⁹⁷ the activities of funding portals, such as prohibiting funding portals from offering investment advice or recommendations.

In response, FINRA has stated in the Notice and in this filing its intent 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. Further, FINRA will enforce any rules for funding portals adopted by the SEC. As such, FINRA has indicated that its rules should not duplicate any rules adopted by the SEC in this area.⁹⁸ Title III of the JOBS Act sets specified limits on the activities of funding portals, for example, by expressly prohibiting funding portals from offering investment advice or recommendations and by prohibiting funding portals from holding, managing, possessing or otherwise handling investor funds or securities, which the SEC proposed to implement by rule.⁹⁹ The SEC has proposed to address such investor protection issues as measures

⁹⁵ NASAA.

⁹⁶ See proposed Regulation Crowdfunding Rule 404.

⁹⁷ See note 5 supra.

⁹⁸ See Regulatory Notice 12-34 (July 2012).

⁹⁹ See proposed Regulation Crowdfunding Rule 300(c)(2).

to reduce the risk of fraud,¹⁰⁰ account opening,¹⁰¹ requirements with respect to investor transactions,¹⁰² payments to third parties,¹⁰³ and permissible communication channels.¹⁰⁴

All funding portal members of FINRA will be subject to these rules if they are adopted by the SEC. Further, as discussed earlier, FINRA is proposing specified conduct and compliance rules, also aimed at investor protection.¹⁰⁵ FINRA does not believe that it serves a regulatory purpose to reduplicate in the Funding Portal Rules standards that the SEC has proposed to address in its rulemaking, or to otherwise duplicate in multiple iterations prohibitions against specified activities already set forth under applicable statutes, proposed SEC rules or the proposed FINRA Funding Portal Rules. As such, FINRA is not proposing at this time the additional suggested rules and standards. However, FINRA may propose 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.

4. Miscellaneous

One commenter proffered suggestions to amend FINRA's arbitration procedures.¹⁰⁶ While the comment is outside the scope of the proposed rule change,

¹⁰⁰ See proposed Regulation Crowdfunding Rule 301.

¹⁰¹ See proposed Regulation Crowdfunding Rule 302.

¹⁰² See proposed Regulation Crowdfunding Rule 303.

¹⁰³ See proposed Regulation Crowdfunding Rule 305.

¹⁰⁴ See proposed Regulation Crowdfunding Rule 402.

¹⁰⁵ See, e.g., proposed Funding Portal Rule 200 and Rule 300 in Exhibit 5.

¹⁰⁶ NASAA.

FINRA notes that proposed Funding Portal Rule 1200 addresses arbitration issues for the purpose of ensuring that funding portal members shall be subject to the existing FINRA rules in this area, unless the context requires otherwise, and for streamlining the existing predispute arbitration rule (FINRA Rule 2268) as appropriate for funding portals.

One commenter suggested that FINRA should provide guidance regarding the scope of liability for firms and advisors when clients make inquiries regarding investments in crowdfunding offerings.¹⁰⁷ The commenter suggested the SEC and FINRA should provide waiver of liability language for advisors and an educational website on crowdfunding, and that FINRA should undertake a retrospective review of the Funding Portal Rules. In response, FINRA welcomes retrospective review of rules and has committed to such review.¹⁰⁸ Further, FINRA notes that it makes substantial commitments to investor education and has a robust and vigorous investor education program. FINRA welcomes further dialogue on these issues as funding portal business develops under any rules implemented by the SEC and the FINRA Funding Portal Rules. FINRA does not propose at this time to provide waiver of liability language as outside the scope of the proposed rule change.

¹⁰⁷ FSI Institute.

¹⁰⁸ See, e.g., Regulatory Notice 14-14 (April 2014) (seeking comment in connection with retrospective review of the Communications with the Public rules); Regulatory Notice 14-15 (April 2014) (seeking comment in connection with retrospective review of the gifts and gratuities and non-cash compensation rules); and Regulatory Notice 15-10 (March 2015) (seeking comment in connection with retrospective review of FINRA's membership application rules).

One commenter requested that FINRA provide a template for supervisory systems for funding portal members to follow.¹⁰⁹ In response, FINRA notes that under the proposed rules, it is the responsibility of a funding portal member to establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. Funding portal members will be expected to be mindful of their supervisory obligations under the FINRA Funding Portal Rules and other applicable rules to establish and maintain a supervisory system accordingly.

One commenter suggested that Form FP-NMA should not require FP Applicants to submit copies of contracts or agreements relating to business activities of the FP Applicant.¹¹⁰ FINRA disagrees, as such information is directly relevant to assessing an FP Applicant for purposes of FINRA membership. Further, FINRA notes that the MAP as set forth under proposed Funding Portal Rule 110 already reflects extensive streamlining so as to tailor requirements to the permitted business of funding portal members. Accordingly, FINRA does not propose to make the suggested change. The same commenter sought clarification as to whether, under proposed Funding Portal Rule 1200(b), funding portal members are required to use predispute arbitration agreements with investors. FINRA notes that neither proposed Funding Portal Rule 1200(b), nor the FINRA rule upon which it is based (FINRA Rule 2268), impose such requirements.

¹⁰⁹ CyberIssues.

¹¹⁰ CyberIssues.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.¹¹¹

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. FINRA Regulatory Notice 13-34 (October 2013).

Exhibit 2b. List of comment letters in response to Regulatory Notice 13-34.

Exhibit 2c. Comments received in response to FINRA Regulatory Notice 13-34. (October 2013).

Exhibit 3a. Form FP-NMA.

Exhibit 3b. Form FP-CMA.

¹¹¹ 15 U.S.C. 78s(b)(2).

Exhibit 3c. Funding Portal Rule 300(c) Form.

Exhibit 3d. Form FP-Statement of Revenue.

Exhibit 5. Text of proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-FINRA-2015-040)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt the Funding Portal Rules and Related Forms and FINRA Rule 4518

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the “Funding Portal Rules”) and related forms. In addition, as part of the proposed rule change, FINRA proposes to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Title III of the Jumpstart Our Business Startups ("JOBS") Act,³ enacted in 2012 with the goal of increasing American job creation and economic growth, contains key provisions relating to securities offered or sold through "crowdfunding."⁴ Under Section 302 of the JOBS Act, a crowdfunding intermediary that engages in crowdfunding on behalf of issuers relying on the JOBS Act's "crowdfunding exemption"⁵ is required to register with the SEC as a "funding portal"⁶ or broker and to register with an applicable

³ Pub. L. No. 112-106, 126 Stat. 306 (2012).

⁴ Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.

⁵ See new Section 4(a)(6) of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77d(a)(6)), as amended by the JOBS Act. The crowdfunding exemption creates an exemption from registration under the Securities Act for securities offered by issuers pursuant to Title III of the JOBS Act.

⁶ Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)), as amended by Title III of the JOBS Act, provides that the term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)), that does not: (1) offer investment advice or recommendations; (2)

self-regulatory organization.⁷

In October 2013, the SEC proposed Regulation Crowdfunding to require registration of funding portals and to implement the provisions of Title III of the JOBS Act.⁸ Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if adopted by the SEC and to apply for FINRA membership. Section 3(h)(2) of the Act,⁹ as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals. Further, FINRA has stated that its rulemaking would be informed by the SEC's rulemaking.¹⁰ Accordingly, FINRA

solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website 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. (The JOBS Act inadvertently created two Sections 3(a)(80) in the Act, the other being the definition of "emerging growth company," added by Section 101(b) of Title I of the JOBS Act. All references in this filing to Section 3(a)(80) of the Act are to the definition of "funding portal" under Title III of the JOBS Act.)

⁷ See Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. 77d-1(a)(1) and (2)).

⁸ See Securities Exchange Act Release No. 70741 (October 23, 2013), 78 FR 66428 (November 5, 2013) (Crowdfunding; Proposed Rules) (the "Regulation Crowdfunding Proposal"). The SEC's proposed Rule 400(a) under Regulation Crowdfunding requires in part that a funding portal must register with the Commission and become a member of FINRA or any other applicable national securities association registered under SEA Section 15A. FINRA is the only registered national securities association.

⁹ 15 U.S.C. 78c(h)(2).

¹⁰ See Securities Exchange Act Release No. 68633 (January 11, 2013), 78 FR 4186 (January 18, 2013) (Notice of Filing and Immediate Effectiveness of Proposed

is proposing the Funding Portal Rules and related forms that would apply to SEC-registered funding portals that become FINRA members pursuant to the JOBS Act and the SEC's Regulation Crowdfunding. The proposed Funding Portal Rules reflect Regulation Crowdfunding as proposed by the SEC and would implement, under FINRA rules, the provisions of Title III of the JOBS Act. FINRA has streamlined the proposed rules to reflect the limited scope of activity permitted by funding portals¹¹ while also maintaining investor protection. FINRA has written the proposed rules specifically for funding portals.¹²

In developing the proposed Funding Portal Rules, FINRA has considered comments that were received in response to Regulatory Notice 13-34 (October 2013) (FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms) (the "Notice").¹³ The proposed Funding Portal Rules and forms as set forth in this filing are largely as published in the Notice. FINRA has made clarifying revisions and a number of additions to the proposal for administrative purposes. Further, as discussed below, FINRA has revised the proposal vis-à-vis the version published in the Notice to better align the provisions governing the right to appeal and hearing under the proposed membership application and eligibility rules with existing provisions for broker-dealer

Rule Change To Adopt Interim Form for Funding Portals Under the Jumpstart Our Business Startups Act; File No. SR-FINRA-2013-005).

¹¹ See note 6 supra. Proposed Rule 300(c)(2) under Regulation Crowdfunding reflects the definition of funding portal as set forth in Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)).

¹² FINRA also has submitted a companion filing to adopt Section 15 of Schedule A to the FINRA By-Laws governing the fees for funding portals that are FINRA members. See SR-FINRA-2015-041.

¹³ Comments are discussed in Item II.C of this filing.

members. In addition, FINRA is not proposing at this time the proposed rule that would have required funding portal members to maintain fidelity bond coverage.¹⁴ Further, FINRA is not proposing at this time the rule that would have required funding portal members to develop and implement a written anti-money laundering program.¹⁵

As set forth in this filing, the proposed Funding Portal Rules consist of a set of seven rules (Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200) and related forms (Form FP-NMA, Form FP-CMA, Funding Portal Rule 300(c) Form, and Form FP-Statement of Revenue). In addition, as part of the proposed rule change, FINRA is proposing to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook. New FINRA Rule 4518 would apply to registered broker members. The proposed requirements of the Funding Portal Rules and related forms and FINRA Rule 4518 are set forth below.

A. Proposed Funding Portal Rule 100 (General Standards)

Proposed Funding Portal Rule 100 (General Standards), similar to the FINRA Rule 0100 Series, sets forth basic standards and definitions for purposes of the Funding Portal Rules. Paragraph (a) under the rule provides that all funding portal members and persons associated with funding portal members shall be subject to the FINRA By-Laws

¹⁴ FINRA is monitoring the development of funding portal business and will determine at a later time whether a rulemaking with respect to fidelity bonds or other financial responsibility requirements is merited. See also Item II.C.1 of this filing.

¹⁵ Pursuant to the Bank Secrecy Act (“BSA”) (31 U.S.C. 5311, *et seq.*) and implementing regulations thereunder (31 C.F.R. 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. The BSA and implementing regulations thereunder do not apply to funding portals at this time. See also Item II.C.2 of this filing.

and FINRA Regulation By-Laws,¹⁶ unless the context requires otherwise, and the Funding Portal Rules. The rule provides that persons associated with a funding portal member shall have the same duties and obligations as a funding portal member under the Funding Portal Rules. For purposes of Section 1(a) of Article III of the FINRA By-Laws, the proposed rule provides that a registered broker or dealer shall include a registered funding portal.

The proposed rule provides that the terms used in the Funding Portal Rules, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws, unless a term is defined differently in a Funding Portal Rule, or unless the context of the term within a Funding Portal Rule requires a different meaning.

The proposed definitions contained in the rule are set forth under paragraph (b). The proposed definitions are largely based on definitions under current FINRA rules, modified as appropriate to apply to funding portal members. The proposed rule provides that, when used in the Funding Portal Rules, unless the context otherwise requires, the terms below have the following meanings:

- Associated person of a funding portal member or person associated with a funding portal member: The term “associated person of a funding portal member” or “person associated with a funding portal member” means 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

¹⁶ FINRA has revised the proposed rule vis-à-vis the version published in the Notice to add “and FINRA Regulation By-Laws” to clarify that funding portal members will also be subject to the FINRA Regulation By-Laws.

by a funding portal member, or any employee of a funding portal member.

- By-Laws: The term “By-Laws” means the By-Laws of the Corporation or the FINRA By-Laws.
- Exchange Act or SEA: The term “Exchange Act” or “SEA” means the Securities Exchange Act of 1934, as amended.
- FINRA: The term “FINRA” means, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.
- Funding Portal: The term “funding portal” is as defined pursuant to proposed Rule 300(c)(2) of SEC Regulation Crowdfunding.
- Funding Portal Member: The term “funding portal member” means any funding portal admitted to membership in FINRA.
- Funding Portal Rules: The term “Funding Portal Rules” means Funding Portal Rules 100 through 1200.
- Investor: The term “investor” does not include a broker, dealer or funding portal.
- Person: The term “person” includes any natural person, partnership, corporation, association, or other legal entity (provided, however, that for purposes of the definition of associated person of a funding portal member as set forth under the rule, the term “person” shall solely include a natural person).
- SEC: The term “SEC” means the Securities and Exchange Commission.
- Securities Act: The term “Securities Act” means the Securities Act of 1933, as amended.

B. Proposed Funding Portal Rule 110 (Funding Portal Application)

1. Proposed Funding Portal Rule 110(a) (Member Application Process)

Proposed Funding Portal Rule 110(a) addresses the membership application process (“MAP”) for funding portals (referred to in the rule as “FP Applicants”). The MAP will enable FINRA to assess whether funding portals are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules. The proposed rule is based on the current NASD Rule 1010 Series membership rules that apply to broker-dealers. However, as discussed below, FINRA has simplified the MAP for funding portals to reflect the limited nature of their business. The proposed rule requirements are set forth below.

- Definitions (Proposed Funding Portal Rule 110(a)(1))

Paragraph (a)(1) of the proposed rule sets forth a set of definitions that apply solely for purposes of MAP. Specifically:

- Associated Person: The rule provides that, solely for purposes of paragraph (a) of Funding Portal Rule 110, the term “associated person” means 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.

- FP Applicant: The term “FP Applicant” means a person that applies for admission to FINRA as a funding portal member under paragraph (a)(3) of Funding Portal Rule 110 or a funding portal member that files an application for approval of a change in ownership or control under paragraph (a)(4) of the rule.¹⁷
- Day: The term “day” means calendar day. The rule provides that, solely for purposes of paragraph (a) of Funding Portal Rule 110, in calculating a period of time, the day of the act (e.g., filing of application, service of notice) from which the period of time designated begins to run shall not be included, provided, however, that where the last day of a period so calculated is a Saturday, Sunday or day on which FINRA is otherwise closed, the period shall run until the end of the next business day.¹⁸
- Department: The term “Department” means the Department of Member Regulation of FINRA.
- District: The term “district” means a district established by the FINRA Regulation Board.
- Service or Filing Date (Proposed Funding Portal Rule 110(a)(2))

Proposed Funding Portal Rule 110(a)(2)(A) provides that FINRA shall serve a

¹⁷ Proposed Funding Portal Rule 110(a)(3) and Rule 110(a)(4) are discussed below.

¹⁸ As proposed in the Notice, the proposed definition of “day” for purposes of the MAP for funding portals did not address situations where the last day of a period calculated is a Saturday, Sunday or day on which FINRA is closed. FINRA has added this language in the interest of clarity.

notice or decision issued under paragraph (a) of the rule by electronic delivery.

Paragraph (a)(2)(B) of the rule provides that, for purposes of Funding Portal Rule 110(a), service by FINRA or filing by an FP Applicant shall be deemed complete on the date recorded by FINRA's electronic systems for electronic communications or by other means of verification prescribed by FINRA.

- Application to be a Funding Portal Member (Proposed Funding Portal Rule 110(a)(3))

Proposed Funding Portal Rule 110(a)(3)(A) provides that an FP Applicant for FINRA membership must submit its application to the Department by filing a Form FP-NMA¹⁹ in the manner prescribed by FINRA and an application fee. Proposed Funding Portal Rule 110(a)(3)(B) provides that, at the time an FP Applicant for FINRA membership submits its application pursuant to paragraph (a)(3)(A) of the rule, the FP Applicant must submit information, in a format to be prescribed by FINRA, indicating whether the FP Applicant or any associated person (as defined in Funding Portal Rule 100(b)(1)) of the FP Applicant is subject to an event described in Section 3(a)(39) of the Act.²⁰ The FP Applicant must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in

¹⁹ Proposed Form FP-NMA is set forth in Exhibit 3a. FINRA has modified the proposed form vis-à-vis the version published in the Notice to reflect the removal of the proposed anti-money laundering and fidelity bond requirements as had been set forth in the Notice and to make other clarifications. Consistent with the limited scope of business to be conducted by funding portals, the proposed form requires significantly less information than the Form NMA for broker-dealer applicants.

²⁰ 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Act sets forth the definition of "statutory disqualification."

such information.

- Application for Approval of a Change in Ownership or Control (Proposed Funding Portal Rule 110(a)(4))

Proposed Funding Portal Rule 110(a)(4)(A) provides that a funding portal member must file an application for prior approval of any change:

- in the equity ownership or partnership capital, LLC membership interest, or other ownership interest of the funding portal member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, LLC membership interest, or other ownership interest; or
- of control persons of the funding portal member, other than the appointment or election of a natural person as an officer or director of the funding portal member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the funding portal member.

Paragraph (a)(4)(B) of the rule provides that a funding portal member must submit its application for prior approval of any of the changes described in Funding Portal Rule 110(a)(4)(A) to the Department by filing a Form FP-CMA²¹ in the manner prescribed by FINRA and an application fee.

²¹ Proposed Form FP-CMA is set forth in Exhibit 3b. FINRA has made clarifying revisions to the form vis-à-vis the version published in the Notice. Consistent with the limited scope of business to be conducted by funding portals, the proposed form requires significantly less information than is required for broker-dealer applicants.

- Rejection of Application That Is Not Complete (Proposed Funding Portal Rule 110(a)(5))

Proposed Funding Portal Rule 110(a)(5) provides that, if the Department determines within 14 days after the filing of an application pursuant to paragraphs (a)(3) or (a)(4) of the rule that the application is not complete, the Department shall reject the application and deem it not to have been filed. The rule provides that, in such case, within the 14 day period, the Department shall serve a written notice on the FP Applicant of the Department's determination and the reasons therefor. FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. The rule further provides that if the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant must submit a new application and fee under proposed Funding Portal Rule 110(a).

- Request For Additional Documents Or Information (Proposed Funding Portal Rule 110(a)(6))

Proposed Funding Portal Rule 110(a)(6) provides that, within 14 days after the filing of an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application, and the FP Applicant must file any additional information and documents with the Department within 14 days after service of the Department's initial request. The rule provides that the Department may serve subsequent requests for additional information or documents at any time during the membership application process. Unless otherwise agreed by the Department and the FP Applicant, the FP Applicant must file any additional information and documents with the

Department within seven days after service of any subsequent request.

- Withdrawal of Application (Proposed Funding Portal Rule 110(a)(7))

Proposed Funding Portal Rule 110(a)(7) provides that, if an FP Applicant withdraws an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule within 14 days after filing the application, FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. The rule provides that if the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant must submit a new application and fee pursuant to paragraphs (a)(3) or (a)(4) of the rule.

- Lapse of Application (Proposed Funding Portal Rule 110(a)(8))

Proposed Funding Portal Rule 110(a)(8) is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. The provision, based largely on NASD Rule 1012(b), is designed to ensure that the provisions governing lapse of an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule better align with existing provisions for broker-dealer members, while also reflecting the more streamlined application process provided for funding portal members in light of their limited permissible activities and the related shorter time frames in which the Department must act on an application. Proposed Funding Portal Rule 110(a)(8)(A) provides that, absent a showing of good cause, an application filed under paragraphs (a)(3) or (a)(4) of the rule shall lapse if an FP Applicant fails to:

- respond fully within 14 days after service of an initial written request, or within seven days after service of a subsequent written request, for information or documents under paragraph (a)(6) of the rule, or within

such other time period as agreed to by the Department and the FP Applicant;

- appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (a)(9) of the rule, as discussed below; or
- file an executed membership agreement under paragraph (a)(11) of the rule, as discussed below, within seven days after service of the agreement, or within such other period as agreed to by the Department and the FP Applicant.

Proposed Funding Portal Rule 110(a)(8)(B) provides that if an FP Applicant wishes to again seek membership or approval of a change in ownership or control subsequent to the lapse of an application pursuant to paragraph (a)(8)(A) of this Rule, then the FP Applicant shall be required to submit a new application in the manner prescribed in paragraph (a)(3) or (a)(4) of the rule, respectively, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws. The rule provides that FINRA shall not refund any fee for a lapsed application.

- Membership Interview (Proposed Funding Portal Rule 110(a)(9))

Proposed Funding Portal Rule 110(a)(9)(A) provides that, before the Department serves its decision on an application for new membership in FINRA, the Department shall conduct one or more membership interviews with a representative or representatives of the FP Applicant. The membership interview(s) may be conducted by video conference or such other means as FINRA may specify. Paragraph 110(a)(9)(B) of the rule provides that, at least five days before a membership interview, the Department shall

serve on the FP Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the FP Applicant who are required to participate in the interview. The rule provides that the Department shall serve the notice in a manner consistent with proposed Funding Portal Rule 110(a)(2). The rule further provides that the FP Applicant and the Department may agree to a shorter or longer period for notice or a different method of service. Paragraph 110(a)(9)(C) of the rule provides that, unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 30 days after the filing of an application or within 14 days after the filing of all additional information or documents requested, whichever is later.

- Standards for Granting or Denying Application (Proposed Funding Portal Rule 110(a)(10))

Proposed Funding Portal Rule 110(a)(10) provides that, after considering an application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule, other information and documents provided by the FP Applicant during the application process, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the FP Applicant meets each of the following five standards, as applicable:²²

- The FP Applicant and its associated persons are capable of complying with applicable federal securities laws, the rules and regulations

²² The five standards that FINRA is proposing are streamlined and consolidated vis-à-vis the 14 standards that apply to broker-dealer applications under NASD Rule 1014(a). FINRA believes that the streamlined, consolidated approach is appropriate to reflect the limited nature of funding portal business.

thereunder, and the Funding Portal Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration all information in its possession, including information regarding whether an FP Applicant or its associated persons:²³

- is subject to an event described in Section 3(a)(39) of the Exchange Act; and
 - is the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea of an FP Applicant or its associated persons.
- The FP Applicant has established all contractual or other arrangements and business relationships with banks, broker-dealers, clearing corporations, service bureaus, escrow agents, transfer agents, technology service providers, or others necessary to initiate the

²³

See proposed Funding Portal Rule 110(a)(10)(A) in Exhibit 5.

operations described in the FP Applicant's Form FP-NMA.²⁴

- The FP Applicant has a supervisory system that is reasonably designed to achieve compliance with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules.²⁵
- The FP Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.²⁶
- The FP Applicant has a recordkeeping system that enables the FP Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements.²⁷

- Granting or Denying Application (Proposed Funding Portal Rule 110(a)(11))

Proposed Funding Portal Rule 110(a)(11)(A) provides that, if the Department determines that the FP Applicant meets each of the applicable standards in paragraph (a)(10) of the rule, the Department shall grant the application filed pursuant to proposed Funding Portal Rule 110(a)(3) or (a)(4). The rule provides that the FP Applicant's approval for membership shall be contingent upon the FP Applicant's filing of an executed written membership agreement. Paragraph (a)(11)(B) of the rule provides that, if the Department determines that the FP Applicant does not meet one or more of the applicable standards in proposed Funding Portal Rule 110(a)(10), the Department shall deny the application.

²⁴ See proposed Funding Portal Rule 110(a)(10)(B) in Exhibit 5.

²⁵ See proposed Funding Portal Rule 110(a)(10)(C) in Exhibit 5.

²⁶ See proposed Funding Portal Rule 110(a)(10)(D) in Exhibit 5.

²⁷ See proposed Funding Portal Rule 110(a)(10)(E) in Exhibit 5.

- Decision (Proposed Funding Portal Rule 110(a)(12))

Proposed Funding Portal Rule 110(a)(12) provides that the Department shall serve a written decision on the application filed pursuant to paragraphs (a)(3) or (a)(4) of the rule within 60 days after the filing of the application or such later date as the Department and the FP Applicant have agreed in writing.²⁸ The rule provides that if the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a)(10) of the rule. The rule provides that a decision that denies the application shall become effective upon service. The Department shall serve its decision and, as applicable, the membership agreement on the FP Applicant in accordance with paragraph (a)(2) of the rule.

- Appeal of Department's Decision (Proposed Funding Portal Rule 110(a)(13))

Proposed Funding Portal Rule 110(a)(13) addresses an appeal of the Department's decision. FINRA has revised the proposed rule vis-à-vis the proposal as published in the Notice so that the appeal process, based in large part on NASD Rules 1015 and 1016, better aligns with existing provisions for broker-dealer applicants. As revised, the proposed rule among other things: (1) permits the FP Applicant to file a written request for review of the Department's decision with the full National Adjudicatory Council; (2) provides for the National Adjudicatory Council or the Review Subcommittee as defined

²⁸ The proposed 60 day time frame is shorter than the 180 day time frame that applies to broker-dealer applicants under NASD Rule 1014(c). FINRA believes that the 60 day time frame for funding portals is appropriate to reflect the limited nature of funding portal business. The provision "or such later date as the Department and the FP Applicant have agreed in writing" is an addition to the proposal vis-à-vis the proposed rules as published in the Notice and is intended, based in large part on NASD Rule 1014(c), to better align the rule with existing provisions for broker-dealer members. In addition, FINRA has made other conforming revisions.

in FINRA Rule 9120 to appoint a Subcommittee to participate in the review; (3) allows either the FP Applicant to request or the Subcommittee to direct a hearing; and (4) sets forth hearing procedures. In addition, FINRA has made other conforming revisions. The specific requirements of the proposed rule as revised are set forth below.

- Request for Review; Final Action

Paragraph (a)(13)(A)(i) of the rule provides that, within 14 days after service of a decision under paragraph (a)(12) of the rule, an FP Applicant may file a written request for review with the National Adjudicatory Council. A request for review must state with specificity why the FP Applicant believes that the Department's decision is inconsistent with the applicable standards set forth in paragraph (a)(10) of the rule or otherwise should be set aside, and state whether a hearing is requested. An FP Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Adjudicatory Council. Paragraph (a)(13)(A)(ii) of the rule provides that, if the FP Applicant does not file a request for a review, abandons its appeal or withdraws its notice of appeal, the Department's decision shall constitute final action by FINRA.

- Transmission of Documents

Paragraph (a)(13)(B) of the rule provides that, within 14 days after the filing of a request for review, the Department shall: transmit to the National Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and serve on the FP Applicant a copy of such documents (other than those documents originally submitted by the FP Applicant) and a copy of the index.

- Appointment of Subcommittee

Paragraph (a)(13)(C) of the rule provides that the National Adjudicatory Council or the Review Subcommittee as defined in FINRA Rule 9120 shall appoint a Subcommittee to participate in the review.²⁹ Paragraph (a)(13)(C) further provides that the Subcommittee shall be composed of two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.

- Powers of Subcommittee

Paragraph (a)(13)(D) of the proposed rule provides that, if a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. The rule provides that if a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the FP Applicant or the Department in connection with the request for review.

- Hearing

Paragraph (a)(13)(E) of the rule addresses the hearing:

- Notice: Paragraph (a)(13)(E)(i) provides that, if a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the National Adjudicatory Council or service of the notice by the Subcommittee. The rule provides that the National Adjudicatory Council shall serve written notice of the date and time of the hearing to the FP Applicant by email, facsimile or overnight courier not later

²⁹ FINRA Rule 9120 among other things defines “Review Subcommittee” to mean a body appointed by the National Adjudicatory Council pursuant to the FINRA Regulation By-Laws.

than 14 days before the hearing;

- Counsel: Paragraph (a)(13)(E)(ii) provides that the FP Applicant and the Department may be represented by counsel at a hearing conducted pursuant to the rule;
- Evidence: Paragraph (a)(13)(E)(iii) provides that formal rules of evidence shall not apply to a hearing under the rule. Not later than five days before the hearing, the FP Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. The rule provides that if the FP Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph;
- Transcript: Paragraph (a)(13)(E)(iv) of the proposed rule provides that the hearing shall be recorded and a transcript prepared by a court reporter. The rule provides that a transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The FP Applicant, the Department, or a witness may seek to correct the transcript. The rule further provides that, upon notice to the FP Applicant and the

Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

- Additional Information, Briefs

Paragraph (a)(13)(F) of the rule provides that, at any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the FP Applicant or the Department to file additional information or briefs. The rule provides that any additional information or brief filed shall be provided to all parties before the National Adjudicatory Council renders its decision.

- Subcommittee Recommendation

Paragraph (a)(13)(G) of the rule provides that the Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council within 60 days after the date of the hearing held pursuant to paragraph (a)(13)(E) of the rule.

- Decision

Paragraph (a)(13)(H) of the rule provides that, after considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions.

- Discretionary Review by the FINRA Board

Paragraph (a)(13)(I)(i) of the rule provides that the National Adjudicatory Council shall provide a copy of its decision to the Board. Alternatively, the National Adjudicatory Council may remand the membership proceeding with instructions. If the Board does not call the decision for review under paragraph (a)(13)(I)(ii) of the rule, as discussed below, the National Adjudicatory Council shall issue the written decision after

the expiration of the Board call for review period, and the decision shall constitute final FINRA action.

Paragraph (a)(13)(I)(ii) of the rule provides that a Governor may call a membership proceeding for review by the Board at the next meeting of the Board that is at least 15 days after the date on which the Board received the decision. If a call for review is made, the Board shall review the membership proceeding not later than the next meeting of the Board. The rule provides that the Board shall issue a written decision affirming, modifying or reversing the National Adjudicatory Council's decision and setting forth its findings and conclusions. Alternatively, the Board may remand the membership proceeding with instructions. The rule provides that the decision shall constitute final FINRA action, unless the Board remands the membership proceeding.

- Application to the SEC for Review (Proposed Funding Portal Rule 110(a)(14))

Proposed Funding Portal Rule 110(a)(14) provides that a person aggrieved by final action of FINRA under paragraph (a) of the rule may apply for review by the SEC pursuant to Section 19(d)(2) of the Act.³⁰ The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the SEC otherwise orders.

- Filing of Misleading Information as to Membership or Registration (Proposed Funding Portal Rule 110(a)(15))

Proposed Funding Portal Rule 110(a)(15) provides that no funding portal member or person associated with a funding portal member shall file with FINRA information

³⁰ 15 U.S.C. 78s(d)(2).

with respect to membership or registration that is incomplete or inaccurate so as to be misleading, or that could in any way tend to mislead, or shall fail to correct such filing after notice thereof.

C. Proposed Funding Portal Rule 200 (Funding Portal Conduct)

Based in large part on FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), proposed Funding Portal Rule 200(a) provides that a funding portal member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Based in large part on FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), proposed Funding Portal Rule 200(b) 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 aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance.

Proposed Funding Portal Rule 200(c) (Communications with the Public) is aimed at prohibiting false and misleading statements. The proposed rule is a streamlined version of FINRA Rule 2210 (Communications with the Public) and sets forth the following requirements:³¹

- Paragraph 200(c)(1) of the rule defines the term “funding portal communication” to mean any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.

³¹ FINRA has further streamlined the rule vis-à-vis the version published in the Notice to reflect the limited scope of activity permitted by funding portals. See note 6 supra.

- Paragraph 200(c)(2) of the rule addresses content standards. Paragraph 200(c)(2)(A) provides that no funding portal communication may:
 - include any false, exaggerated, unwarranted, promissory or misleading statement or claim;
 - omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;
 - state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the funding portal member's business practices; or
 - predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment.

Further, paragraph (c)(2)(B) of the rule provides that all funding portal member communications must be based on principles of fair dealing and good faith and must be fair and balanced. Paragraph (c)(2)(C) of the rule provides that all funding portal member communications must prominently disclose the name of the funding portal member, or the name under which the funding portal member primarily conducts business as disclosed on the member's Form FP-NMA.

- Paragraph 200(c)(3) of the rule addresses issuer communications.

Specifically, the rule provides that the content standards of paragraphs (c)(2)(A) and (B) of the rule shall not apply to any communication on the funding portal member's website that is prepared solely by an issuer; provided, however, that no funding portal member may include on its website any issuer communication that the funding portal member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

D. Proposed Funding Portal Rule 300 (Funding Portal Compliance)

1. Proposed Funding Portal Rule 300(a) (Supervisory System)

Proposed Funding Portal Rule 300(a) is a streamlined version of FINRA's supervision rules and is designed to permit funding portal members flexibility to tailor their supervisory systems to their business models. Paragraph (a)(1) of the rule requires that each funding portal member establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. The rule provides that a funding portal member's supervisory system must provide, at a minimum, for:

- the establishment and maintenance of written procedures to supervise the activities of the funding portal and its associated persons;
- the designation of a person with authority to carry out the supervisory responsibilities of the funding portal member; and
- reasonable efforts to determine that all supervisory personnel are qualified by

virtue of experience or training to carry out their assigned responsibilities.

Paragraph (a)(2) of the rule is designed to align in large part with the inspections and examinations provisions of proposed Rule 403(c) under Regulation Crowdfunding. Proposed Funding Portal Rule 300(a)(2) provides that a funding portal member must permit the examination and inspection of all of its businesses and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by representatives of FINRA and the Commission, and must cooperate with the examination, inspection or investigation of any persons directly or indirectly using its platform.

2. Proposed Funding Portal Rule 300(b) (Executive Representative)

As discussed above, the General Standards under proposed Funding Portal Rule 100 provide 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. Article IV, Section 3 of the FINRA By-Laws requires, in brief, that each FINRA member appoint and certify to FINRA an executive representative to represent, vote, and act for the member in FINRA affairs. Consistent with FINRA Rule 4517(b),³² proposed Funding Portal Rule 300(b) requires each funding portal member to designate to FINRA, for purposes of Article IV, Section 3 of the FINRA By-Laws, an executive representative. The rule requires that each funding portal member must update its executive representative designation in the manner

³² The executive representative requirement is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. FINRA believes it is helpful to prospective funding portal members to add this administrative requirement to the Funding Portal Rules for purposes of clarity.

prescribed by proposed Funding Portal Rule 300(d), as discussed below.

3. Proposed Funding Portal Rule 300(c) (Reporting Requirements)

Proposed Funding Portal Rule 300(c) requires funding portal members to report to FINRA (and sets forth the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events.³³ The rule is largely based on current FINRA Rule 4530 (Reporting Requirements). Specifically, the rule sets forth the following requirements.

- Paragraph (c)(1) of the rule requires each funding portal member to promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the member knows or should have known of the existence of any of the following:
 - the funding portal member or an associated person of the funding portal member:³⁴
 - is named as a defendant or respondent in any regulatory proceeding, whether foreign or domestic, involving an alleged violation of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations, standards of conduct or by-laws, or has been found by a regulatory body or self-regulatory organization, whether foreign or domestic, to have violated any securities-,

³³ Funding portal members would use the Funding Portal Rule 300(c) Form for their reporting requirements pursuant to the rule. See Exhibit 3c of this filing.

³⁴ See proposed Funding Portal Rule 300(c)(1)(A) in Exhibit 5.

insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct;³⁵

- is the subject of any written complaint involving allegations of fraudulent conduct or misuse or misappropriation of funds or assets;³⁶
- is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities-, insurance-, commodities-, financial- or investment-related regulatory body or self-regulatory organization, whether foreign or domestic, or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;³⁷
- is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false 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

³⁵ See proposed Funding Portal Rule 300(c)(1)(A)(i) in Exhibit 5.

³⁶ See proposed Funding Portal Rule 300(c)(1)(A)(ii) in Exhibit 5.

³⁷ See proposed Funding Portal Rule 300(c)(1)(A)(iii) in Exhibit 5.

commit any of these offenses, or substantially equivalent activity in a domestic, military or foreign court;³⁸

- is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, funding portal, underwriter or insurance company that was suspended, expelled or had its registration denied or revoked by any regulatory body, jurisdiction or organization, whether foreign or domestic, or is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to, any felony or misdemeanor in a foreign or domestic court;³⁹
- is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or arbitration, or is the subject of any claim for damages by an investor, broker, dealer or funding portal member that relates to the provision of financial services or relates to a financial transaction, and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when

³⁸ See proposed Funding Portal Rule 300(c)(1)(A)(iv) in Exhibit 5.

³⁹ See proposed Funding Portal Rule 300(c)(1)(A)(v) in Exhibit 5.

the funding portal member is the defendant or respondent or is the subject of any claim for damages by an investor, broker, dealer or funding portal member, then the reporting to FINRA shall be required only when such judgment, award or settlement is for an amount exceeding \$25,000;⁴⁰

- is, or is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act, provided, however, that this requirement shall not apply to activities with a member or an associated person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member or to be associated with a member. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification;⁴¹ or
- an associated person of the funding portal member is the subject of any disciplinary action taken by the funding portal member involving suspension, termination, the withholding of compensation or of any other remuneration in excess of \$2,500, the imposition of fines in excess of \$2,500 or is otherwise disciplined

⁴⁰ See proposed Funding Portal Rule 300(c)(1)(A)(vi) in Exhibit 5.

⁴¹ See proposed Funding Portal Rule 300(c)(1)(A)(vii) in Exhibit 5.

in any manner that would have a significant limitation on the individual's activities on a temporary or permanent basis.⁴²

- Paragraph (c)(2) of the rule provides that each funding portal member shall promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the funding portal member has concluded or reasonably should have concluded that an associated person of the funding portal member or the funding portal member itself has violated any securities-, commodities-, financial-or investment-related laws, rules, regulations or standards of conduct of any foreign or domestic regulatory body or self-regulatory organization.
- Paragraph (c)(3) of the rule provides each person associated with a funding portal member must promptly report to the funding portal member the existence of any of the events set forth in paragraph (c)(1)(A) of the rule.
- Paragraph (c)(4) of the rule provides that nothing contained in the rule shall eliminate, reduce or otherwise abrogate the responsibilities of a funding portal member to promptly disclose required information on SEC Form Funding Portal as applicable, to make any other required filings or to respond to FINRA with respect to any investor complaint, examination or inquiry. The rule provides that, in addition, a member need not report an event otherwise required to be reported under paragraph (c)(1)(A) of the rule if the member discloses the event on SEC Form Funding Portal, consistent with the requirements of that form, or as required pursuant to proposed Funding Portal

⁴²

See proposed Funding Portal Rule 300(c)(1)(B) in Exhibit 5.

Rule 800(b)(2).⁴³

- Paragraph (c)(5) of the rule provides that, for purposes of the rule, Supplementary Material .01 through .07, .09 and .10 of FINRA Rule 4530 (the “Supplementary Material”) shall apply,⁴⁴ provided, however, that, as the context requires:
 - the term “member” as used in the Supplementary Material shall mean “funding portal member” as defined pursuant to proposed Funding Portal Rule 100(b);
 - the term “associated person” as used in the Supplementary Material shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to proposed Funding Portal Rule 100(b);
 - Supplementary Material .01 shall apply to paragraphs (c)(1)(B) and (c)(2) of proposed Funding Portal Rule 300;

⁴³ As further discussed below, proposed Funding Portal Rule 800(b) addresses the public disclosure of information on funding portals by FINRA and requires, among other things, that funding portal members provide and update information regarding statutory disqualifications.

⁴⁴ The Supplementary Materials provide additional guidance as to specified requirements under the rule. Supplementary Materials .01 and .02 address members’ conclusions of violative conduct. Supplementary Material .03 addresses the meaning of the term “found” as used in the specified provisions of the rule. Supplementary Material .04 addresses the meaning of the term “regulatory body” for purposes of the rule. Supplementary Material .05 provides additional guidance as to reporting of individual and related events. Supplementary Material .06 addresses the calculation of monetary thresholds. Supplementary Material .07 addresses former associated persons. Supplementary Material .09 defines the meaning of the term “financial related” for purposes of the rule. Supplementary Material .10 provides guidance as to findings and actions by FINRA.

- Supplementary Material .02 and .03 shall apply to paragraphs (c)(1)(A)(i) and (c)(2) of the rule;
- Supplementary Material .05 and .07 shall apply to paragraphs (c)(1) and (c)(2) of the rule;
- Supplementary Material .06 shall apply to paragraph (c)(1)(A)(vi) of the rule; and
- Supplementary Material .10 shall apply to paragraphs (c)(1)(A)(i) and (c)(1)(A)(iii) of the rule.

4. Proposed Funding Portal Rule 300(d) (Contact Information Requirements)

Proposed Funding Portal Rule 300(d), based in large part on the contact information requirements set forth in FINRA Rule 4517(c), is designed to require funding portal members to report to FINRA specified contact information. Specifically, the rule provides:

- Each funding portal member must report to FINRA all contact information required by FINRA through such means as FINRA may specify.
- Each funding portal member must promptly update its required contact information (including its executive representative designation and contact information as required by Article IV, Section 3 of the FINRA By-Laws), but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its required contact information, through such means as FINRA may specify, within 17 business days after the end of each calendar year.

- Each funding portal member must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

5. Proposed Funding Portal Rule 300(e) (Statement of Gross Revenue)

Proposed Funding Portal Rule 300(e) requires each funding portal member each year to report to FINRA, in the manner prescribed by FINRA, the member's gross revenue on Form FP-Statement of Revenue, no later than 60 calendar days following each calendar year-end.⁴⁵ The rule requires that the statement of gross revenue must be prepared in accordance with U.S. Generally Accepted Accounting Principles.

6. Proposed Funding Portal Rule 300(f) (Record of Associated Persons of the Funding Portal Member)

Proposed Funding Portal Rule 300(f) is based in large part on SEA Rule 17a-3(a)(12)(ii) (17 C.F.R. 240.17a-3(a)(12)(ii)), which requires broker-dealers to make and keep current a record listing every associated person of the broker-dealer. FINRA believes that requiring funding portals to keep such a record is prudent both for supervisory and regulatory oversight purposes.⁴⁶ The rule requires each funding portal

⁴⁵ The requirement to submit the Statement of Gross Revenue using Form FP-Statement of Revenue is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. Proposed Form FP-Statement of Revenue is set forth in Exhibit 3d of this filing. The Statement of Gross Revenue will be used to determine a funding portal member's annual fees, which FINRA is establishing as part of a separate rulemaking. See note 12 supra.

⁴⁶ Proposed Funding Portal Rule 300(f) is an addition to the proposal vis-à-vis the proposed rules as published in the Notice. FINRA believes the requirement is a useful complement to proposed Rule 404 under the SEC's Regulation Crowdfunding, which sets forth specified records requirements for funding portals

member to make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding portal member where the associated person regularly conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. The rule requires each funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place, which aligns with the retention period that the SEC has prescribed for records that funding portals would have to make and preserve pursuant to proposed Rule 404 under Regulation Crowdfunding.

E. Proposed Funding Portal Rule 800 (Investigations and Sanctions)

1. Proposed Funding Portal Rule 800(a) (Application of FINRA Rule 8000 Series (Investigations and Sanctions) to Funding Portals)

Proposed Funding Portal Rule 800(a) is designed to provide that funding portal members will be subject to specified FINRA rules governing investigations and sanctions. Specifically, the rule provides that, except for FINRA Rules 8110 (Availability of Manual to Customers), 8211 (Automated Submission of Trading Data Requested by FINRA), 8213 (Automated Submission of Trading Data for Non-Exchange-Listed Securities Requested by FINRA) and 8312 (FINRA BrokerCheck Disclosure),⁴⁷ all funding portal members shall be subject to the FINRA Rule 8000

but does not include the requirement as to listing associated persons of the funding portal.

⁴⁷ FINRA does not propose to apply FINRA Rule 8110 as part of the Funding Portal Rules as the rule addresses availability of the complete FINRA Manual and

Series, unless the context requires otherwise, provided, however, that:

- the term “member” as used in the FINRA Rule 8000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the term “associated person” as used in the FINRA Rule 8000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the terms “rules” and “FINRA rules” as used in the FINRA Rule 8000 Series shall include the Funding Portal Rules;
- for purposes of FINRA Rule 8210(d):⁴⁸
 - a notice under FINRA Rule 8210 shall be deemed received by the funding portal member to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person who is currently associated with a funding portal member, the rule provides that a notice under FINRA Rule 8210 shall be deemed received by the person by mailing or otherwise transmitting the notice to the last

FINRA is not proposing to apply the complete Manual to funding portal members. FINRA Rules 8211 and 8213 address trading data and are not applicable to funding portals by virtue of the limited nature of their business. With respect to FINRA Rule 8312, as discussed below, FINRA is proposing Funding Portal Rule 800(b) as a streamlined version of the rule to apply to funding portal members.

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FINRA Rule 8210(d) addresses notices mailed or otherwise transmitted under the rule.

known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a funding portal member, the rule provides that a notice under FINRA Rule 8210 shall be deemed received by the person upon personal service, as set forth in FINRA Rule 9134(a)(1).⁴⁹ The rule further provides that if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person currently associated with the funding portal member has actual knowledge that the funding portal member's address in the SEC Form Funding Portal is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

- (i) the last known business address of the funding portal member as reflected in the SEC Form Funding Portal; and
 - (ii) any other more current address of the funding portal member or the person currently associated with the funding portal member known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice; and
- if the Adjudicator or FINRA staff responsible for mailing or

⁴⁹ FINRA Rule 9134 addresses methods of and procedures for service for purposes of the Rule 9000 Series.

otherwise transmitting the notice to the funding portal member or person knows that the funding portal member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the funding portal member or person, and any notice served upon counsel shall be deemed received by the funding portal member or person.

2. Proposed Funding Portal Rule 800(b) (Public Disclosure of Information on Funding Portals)

Proposed Funding Portal Rule 800(b) is a streamlined version of FINRA Rule 8312 (FINRA BrokerCheck Disclosure) and addresses specified information that FINRA shall make available to the public.⁵⁰ Specifically, paragraph (b)(1) of the rule provides that 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 SEC Regulation Crowdfunding, in the form made publicly available by the SEC. The rule provides that, with respect to a former funding portal member, FINRA may provide similar access to the public to the former funding portal member's most recent SEC Form Funding Portal, and any amendments and registration withdrawal requests, as filed with the SEC.

Paragraph (b)(2) of the rule provides that FINRA shall make available to the

⁵⁰ FINRA has further streamlined the proposed rule vis-à-vis the version published in the Notice in the interest of clarity.

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 Exchange Act. The rule provides that the funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

Paragraph (b)(3) of the rule provides that, with respect to the information provided pursuant to paragraph (b)(2) of the rule, FINRA shall not make available information reported as a Social Security number, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by FINRA. The rule provides that FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns or information that was reported in error by a funding portal member.

F. Code of Procedure (Proposed Funding Portal Rule 900)

1. Proposed Funding Portal Rule 900(a) (Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals)

Proposed Funding Portal Rule 900(a) is designed to provide that funding portal members will be subject to specified FINRA rules setting forth FINRA's Code of Procedure. Specifically, except for the FINRA Rule 9520 Series, FINRA Rule 9557, and

the FINRA Rule 9700 Series,⁵¹ the rule provides that all funding portal members shall be subject to the FINRA Rule 9000 Series, unless the context requires otherwise, provided, however, that:

- the term “member” as used in the FINRA Rule 9000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the term “associated person” as used in the FINRA Rule 9000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the terms “rules” and “FINRA rules” as used in the FINRA Rule 9000 Series shall include the Funding Portal Rules;
- for purposes of FINRA Rule 9217, a funding portal member may be subject to a fine under FINRA Rule 9216(b) with respect to any of the following:⁵²

⁵¹ The FINRA Rule 9520 Series addresses “eligibility proceedings” in the context of statutory qualifications which, as discussed further below, FINRA is proposing to address under Funding Portal Rule 900(b). FINRA Rule 9557 addresses service of notice to members that are experiencing financial or operational difficulties under net capital or similar financial responsibility requirements. Because funding portals would not be subject to such requirements, Rule 9557 would not be applicable. Similarly, the FINRA Rule 9700 Series addresses the automated quotation, execution or communication systems owned or operated by FINRA, which are outside the scope of funding portal business activity. Accordingly FINRA does not propose to apply the Rule 9700 Series to funding portals.

⁵² FINRA Rule 9216(b) sets forth procedures for disposition of specified rule violations designated as minor rule violations pursuant to a plan (referred to as an “MRVP”) declared effective by the SEC in accordance with SEA Section 19(d)(1) (15 U.S.C. 78s(d)(1)) and Rule 19d-1(c)(2) (17 C.F.R. 240.19d-1(c)(2)) thereunder. FINRA Rule 9217 sets forth the rules that are eligible for such disposition. FINRA’s MRVP allows FINRA to impose a fine of up to \$2,500 on any firm it regulates or person associated with a FINRA regulated firm for a minor violation of an eligible rule.

- failure to timely submit amendments to SEC Form Funding Portal;
 - Funding Portal Rule 200(c) (Communications with the Public);
 - Funding Portal Rule 300(a) – failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217;
 - Funding Portal Rule 300(c) – failure to timely file reports;
 - failure to provide or update contact information as required by Funding Portal Rule 300(d);
 - Rule 303(f) of SEC Regulation Crowdfunding – confirmation of transactions; and
 - Rule 404 of SEC Regulation Crowdfunding – failure to make and preserve records in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Funding Portal Rules;
- for purposes of FINRA Rules 9134(b)(1) and 9134(b)(2), the residential or business address, as applicable, as reflected in SEC Form Funding Portal, in lieu of the Central Registration Depository, shall be acceptable;
 - for purposes of FINRA Rule 9134(b)(2), service on a contact employee, or United States agent for service of process, as set forth in SEC Form Funding Portal, in lieu of Form BD, shall be acceptable;
 - for purposes of FINRA Rule 9551(a),⁵³ FINRA staff may issue a written

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FINRA Rule 9551 addresses expedited proceedings by FINRA for failure to comply with public communication standards.

notice requiring a funding portal member to file communications with the FINRA Advertising Regulation Department at least ten days prior to use if FINRA staff determines that the member has departed from the standards of Funding Portal Rule 200(c);

- for purposes of FINRA Rule 9551(d), the pre-use filing requirement referenced in a notice issued and served under FINRA Rule 9551 shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to FINRA Rule 9559;
- for purposes of proceedings pursuant to FINRA Rule 9810(a),⁵⁴ proceedings may be initiated with respect to alleged violations of Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and SEA Rule 10b-5 (17 C.F.R. 240.10b-5), Funding Portal Rule 200(a) (if the alleged violation is misuse of investor funds or assets, or based on violations of Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and Funding Portal Rule 200(b).

2. Proposed Funding Portal Rule 900(b) (Eligibility Proceedings)

Proposed Funding Portal Rule 900(b) is a streamlined version of the current FINRA Rule 9520 Series. The rule sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules. Such actions hereinafter are referred to as “eligibility

⁵⁴ FINRA Rule 9810 addresses initiation of cease and desist proceedings by FINRA for specified violations.

proceedings.” The rule requirements are set forth below.

- Definitions (Proposed Funding Portal Rule 900(b)(2))

Paragraph (b)(2) of the rule sets forth the following definitions:

- The term “Application” means FINRA’s Form MC-400 for individuals or Form MC-400A for funding portal members, filed with the Department of Registration and Disclosure (“RAD”).
 - The term “disqualified funding portal member” means a funding portal member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the FINRA By-Laws.
 - The term “disqualified person” means an associated person of a funding portal member or person seeking to become an associated person of a funding portal member who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 3 of the FINRA By-Laws.
 - The term “sponsoring funding portal member” means the funding portal member or applicant for membership pursuant to Funding Portal Rule 110(a) that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.
- Initiation of Eligibility Proceeding; Department of Member Regulation Consideration (Proposed Funding Portal Rule 900(b)(3))

Proposed Funding Portal Rule 900(b)(3)(A) addresses initiation of eligibility

proceedings.

- Issuance of Notice of Disqualification or Ineligibility

Proposed Funding Portal Rule 900(b)(3)(A)(i) provides that if FINRA staff has reason to believe that a disqualification exists or that a funding portal member or person associated with a funding portal member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the funding portal member or applicant for funding portal membership under proposed Funding Portal Rule 110(a). The rule provides that the notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to funding portal members or applicants for funding portal membership when no Application is required pursuant to proposed Funding Portal Rule 900(b)(7), as discussed below.

- Notice Regarding a Funding Portal Member

Proposed Funding Portal Rule 900(b)(3)(A)(ii) provides that a notice issued to a disqualified funding portal member shall state that the disqualified funding portal member may apply for relief by filing an Application or, in the case of a matter set forth in proposed Funding Portal Rule 900(b)(8)(A), as discussed below, a written request for relief, within 10 business days after service of the notice. The rule provides that if the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the membership of the funding portal member shall be canceled, unless the Department of

Member Regulation grants an extension for good cause shown.

- Notice Regarding an Associated Person

Proposed Funding Portal Rule 900(b)(3)(A)(iii) provides that a notice issued regarding a disqualified person to a funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) shall state that such funding portal member or applicant for funding portal membership may file an Application on behalf of itself and such person or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. The rule provides that if the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the funding portal member may not associate or continue to associate with the disqualified person, unless the Department of Member Regulation grants an extension for good cause shown.

- Service

Paragraph (b)(3)(A)(iv) of the proposed rule provides that a notice issued under paragraph (b)(3)(A) of the rule shall be served by facsimile or electronic mail, or pursuant to FINRA Rules 9131⁵⁵ and 9134, as adopted pursuant to proposed Funding Portal Rule 900(a).

- Obligation of Funding Portal Member to Initiate Eligibility Proceeding

(Proposed Funding Portal Rule 900(b)(4))

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FINRA Rule 9131 addresses service of a complaint by FINRA for purposes of the Rule 9000 Series.

Proposed Funding Portal Rule 900(b)(4)(A) addresses the obligation of a funding portal member to initiate eligibility proceedings. Specifically, the rule provides that a funding portal member must file an Application or, in the case of a matter set forth in proposed Funding Portal Rule 900(b)(8)(A) a written request for relief, with RAD, if the funding portal member determines prior to receiving a notice under paragraph (b)(3)(A) of this Rule that:

- It has become a disqualified funding portal member;
 - A person associated with such funding portal member or whose association is proposed by an applicant for funding portal membership under Funding Portal Rule 110(a) has become a disqualified person; or
 - The funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) wishes to sponsor the association of a person who is a disqualified person.
- Withdrawal of Application or Written Request for Relief (Proposed Funding Portal Rule 900(b)(5))

Proposed Funding Portal Rule 900(b)(5)(A) provides that a funding portal member may withdraw its Application or, as set forth in proposed Funding Portal Rule 900(b)(8)(A) its written request for relief, at any time prior to an appeal by filing a written notice with the Department of Member Regulation and RAD pursuant to FINRA Rules 9135 (Filing of Papers with Adjudicator: Procedure), 9136 (Filing of Papers: Form), and 9137 (Filing of Papers: Signature Requirement and Effect), as adopted pursuant to Funding Portal Rule 900(a). The rule provides that a funding portal member may withdraw its Application after the start of an appeal but prior to the issuance of a

decision by the National Adjudicatory Council by filing a written notice with the Department of Member Regulation and the Office of General Counsel pursuant to FINRA Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a).

- Ex Parte Communications (Proposed Funding Portal Rule 900(b)(6))

Proposed Funding Portal Rule 900(b)(6) provides that the prohibitions against ex parte communications set forth in FINRA Rule 9143, as adopted pursuant to Funding Portal Rule 900(a), shall become effective under Funding Portal Rule 900(b) when FINRA staff has initiated the eligibility proceeding and FINRA staff has knowledge that a funding portal member intends to file an Application or written request for relief pursuant to Funding Portal Rule 900(b).

- Relief from Eligibility Proceedings (Proposed Funding Portal Rule 900(b)(7))

Proposed Funding Portal Rule 900(b)(7) provides that a funding portal member is not required to file an Application if:⁵⁶

- The disqualification arises solely from findings in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, the Commodity Futures Trading Commission or a self-regulatory organization, and the

⁵⁶ The disqualifications set forth under paragraph (b)(7) of the rule reflect the three additional categories of disqualification that FINRA addressed in 2009, specifically, willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted by the Sarbanes-Oxley Act, and associations with specified other persons subject to statutory disqualification. See Regulatory Notice 09-19 (Eligibility Proceedings) (April 2009). See also Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), 74 FR 17267 (April 14, 2009) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR-FINRA-2009-022).

sanction is no longer in effect.⁵⁷

- The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(i), and the bar is no longer in effect, provided that there is no final order specified in Exchange Act Section 15(b)(4)(H)(ii), in which case paragraph (b)(7)(C) of the rule, as discussed below, applies.⁵⁸
- The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(ii), and:
 - the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect; or
 - the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered ten or more years ago.⁵⁹
- The disqualification arises solely under Exchange Act Section 3(a)(39)(E), and the disqualified funding portal member or person is subject to the disqualification solely because the member or person has associated with it any person who is known, or in the exercise of reasonable care should be known, to the disqualified member or

⁵⁷ See proposed Funding Portal Rule 900(b)(7)(A) in Exhibit 5.

⁵⁸ See proposed Funding Portal Rule 900(b)(7)(B) in Exhibit 5.

⁵⁹ See proposed Funding Portal Rule 900(b)(7)(C) in Exhibit 5.

person to be a person described by subparagraph (A), (B), (C), or (D) of Exchange Act Section 3(a)(39), unless the associated person controls such disqualified member or person, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member.⁶⁰

- Matters That May Be Approved After the Filing of an Application or Written Request for Relief (Proposed Funding Portal Rule 900(b)(8))

Paragraph (b)(8)(A) of the proposed rule provides that the Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified funding portal member or a sponsoring funding portal member without the filing of an Application by such disqualified funding portal member or sponsoring funding portal member if a disqualified funding portal member or disqualified person is subject to one or more of the following conditions, but is not otherwise subject to disqualification:

- an injunction as described in Section 15(b)(4)(C) of the Exchange Act that was entered ten or more years prior to the proposed admission or continuance; or
- a request to change the supervisor of a disqualified person.

Paragraph (b)(8)(B) of the rule provides that the Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve, upon the filing of an Application by a disqualified funding portal member

⁶⁰ See proposed Funding Portal Rule 900(b)(7)(D) in Exhibit 5.

or a sponsoring funding portal member and written consent to a heightened supervisory plan, all Applications seeking relief from disqualifications arising under Section 3(a)(39) of the Exchange Act.

Paragraph (b)(8)(B)(i) of the rule provides that, by the submission of a written consent to a heightened supervisory plan, the disqualified funding portal member, sponsoring funding portal member and disqualified person waive:

- the right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;
- any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim bias or prejudgment by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's approval or the supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan; and
- any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, as adopted

pursuant to Funding Portal Rule 900(a), in connection with such person's or body's participation in discussions regarding the terms and conditions of the approval or supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan.

Paragraph (b)(8)(B)(ii) of the rule provides that if the heightened supervisory plan is rejected, the disqualified funding portal member, sponsoring funding portal member, or disqualified person shall be bound by the waivers made under paragraph (b)(8)(B)(i) of the rule for conduct by persons or bodies occurring during the period beginning on the date the heightened supervisory plan was submitted and ending upon the rejection of the heightened supervisory plan and shall have the right to appeal such decision pursuant to proposed Funding Portal Rule 900(b)(11), as discussed below.

- Department of Member Regulation Consideration of Applications for New Funding Portal Members (Proposed Funding Portal Rule 900(b)(9))

Proposed Funding Portal Rule 900(b)(9) provides that in all instances where FINRA receives a Form MC-400 or Form MC-400A under this rule, and such Application is submitted on behalf of an applicant for membership as a funding portal member under Funding Portal Rule 110(a), the Department of Member Regulation shall defer a decision on such Form MC-400 or Form MC-400A until such time as FINRA has issued a determination on the application submitted pursuant to Funding Portal Rule 110(a).

- Rights of Disqualified Funding Portal Member, Sponsoring Funding Portal Member, Disqualified Person, and Department of Member Regulation

(Proposed Funding Portal Rule 900(b)(10))

Proposed Funding Portal Rule 900(b)(10)(A) provides that in the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to Funding Portal Rule 900(b)(8)(A), the disqualified funding portal member or sponsoring funding portal member may file an Application under Funding Portal Rule 900(b)(8)(B). The rule provides that the Department of Member Regulation may require a disqualified funding portal member or sponsoring funding portal member to file an Application with RAD, notwithstanding the provisions of proposed Funding Portal Rule 900(b)(8)(A).

FINRA has revised paragraph (b)(10)(B) of the rule vis-à-vis the proposal as published in the Notice so as to better align the rule with existing provisions for broker-dealer members. Based in large part on FINRA Rule 9522(e)(3), proposed Funding Portal Rule 900(b)(10)(B), as revised, provides that, in the event the Department of Member Regulation does not approve an Application pursuant to Funding Portal Rule 900(b)(8)(B), the Department of Member Regulation shall inform the disqualified funding portal member or sponsoring funding portal member of its decision in writing. Further, as revised, the rule provides that the decision shall explain in detail the reason for denial. The rule states that the disqualified funding portal member or sponsoring funding portal member shall have the right to appeal such decision pursuant to proposed Funding Portal Rule 900(b)(11), as discussed below. If not timely appealed pursuant to paragraph (b)(11) of the rule, the decision issued by the Department of Member Regulation shall constitute final action of FINRA and shall become effective immediately.

- Appeal of Department of Member Regulation's Decision to Deny an Application or a Written Request for Relief (Proposed Funding Portal Rule 900(b)(11))

Paragraph (b)(11) of the proposed rule addresses appeal of the Department of Member Regulation's decision to deny an application or a written request for relief.

Based in large part on FINRA Rules 9524 and 9525, FINRA has revised the proposed rule vis-à-vis the proposal as published in the Notice so as to better align the rule with existing provisions for broker-dealer members. As revised, the proposed rule sets forth among other things procedures for a hearing when one is requested, including notice of the hearing, the rights of parties at the hearing, transmission of documents, extensions of time, postponements and adjournments, and requirements as to the hearing record. In addition, FINRA has made other conforming revisions. The specific requirements of the proposed rule as revised are set forth below.

- Notice (Proposed Funding Portal Rule 900(b)(11)(A))

Paragraph (b)(11)(A) of the proposed rule provides that a funding portal member or sponsoring funding portal member may file a written notice of appeal within 14 days after service of a decision issued under Funding Portal Rule 900(b). The rule provides that the notice of appeal shall be filed with the Office of General Counsel, with a copy to the Department of Member Regulation. The notice of appeal shall state with specificity why the appellant believes the Department of Member Regulation's decision is not consistent with the public interest or should otherwise be set aside, and shall state whether a hearing is requested. The

notice of appeal shall be signed by the appellant.

- Stay of Decision (Proposed Funding Portal Rule 900(b)(11)(B))

Paragraph (b)(11)(B) of the proposed rule provides that an appeal of the Department of Member Regulation's decision to deny an Application or a written request for relief shall operate as a stay of that decision while the appeal is pending.

- Subcommittee (Proposed Funding Portal Rule 900(b)(11)(C))

Paragraph (b)(11)(C) of the proposed rule provides that after an appellant files a timely appeal, the National Adjudicatory Council or the Statutory Disqualification Committee shall appoint two or more members, who shall be current or former members of the National Adjudicatory Council, Statutory Disqualification Committee, or former Directors or Governors, to form a subcommittee. The rule provides that the subcommittee shall conduct a hearing when one is requested, review the appeal, and recommend a decision to the Statutory Disqualification Committee.

- Notice of Hearing and Rights of Parties at Hearing (Proposed Funding Portal Rule 900(b)(11)(D))

Paragraph (b)(11)(D) of the proposed rule provides that, if a hearing is requested, the hearing shall be held no later than 90 days after the filing of a notice of appeal unless the subcommittee determines that there is good cause shown for extending the time period. The rule provides that the appellant and the Department of Member Regulation

shall be notified via mail, email, facsimile, or overnight courier of the location, time, and date of the hearing not less than 14 business days before the hearing, unless the parties agree to shorten the time period or where good cause has been shown for an expedited proceeding under paragraph (b)(11)(F) of the rule as discussed further below. The appellant and the Department of Member Regulation shall be entitled to be heard in person at a hearing, to be represented by an attorney, and to submit any relevant evidence.

- Withdrawal or Abandonment (Proposed Funding Portal Rule 900(b)(11)(E))

Paragraph (b)(11)(E) of the proposed rule provides that, if an appellant abandons or withdraws the Application, the Department of Member Regulation's decision shall constitute final action by FINRA.

- Expedited Review (Proposed Funding Portal Rule 900(b)(11)(F))

Paragraph 900(b)(11)(F) of the proposed rule provides that where the failure to promptly review a decision to deny an Application would unduly or unfairly harm the funding portal member or sponsoring funding portal member, the subcommittee shall provide an expedited hearing upon a showing of good cause. The subcommittee would have the authority to set deadlines to prepare for the expedited hearing that would be shorter than the dates for a non-expedited review under Funding Portal Rule 900(b)(11)(G).

- Transmission of Documents (Proposed Funding Portal Rule

900(b)(11)(G))

Paragraph (b)(11)(G)(i) of the proposed rule provides that, within 14 days after the filing of a notice of appeal, the Department of Member Regulation shall transmit to the Office of General Counsel, and serve on the appellant to the extent that any such documents have not been previously provided, copies of all documents that were considered in connection with the Department of Member Regulation's decision to deny the Application and an index to the documents.

Paragraph (b)(11)(G)(ii) of the proposed rule provides that, not less than 10 business days before the hearing, the Department of Member Regulation and the appellant shall serve proposed exhibit and witness lists on each other and the Office of General Counsel. The rule provides that the exhibit and witness lists shall be served by email, facsimile or overnight courier.

Paragraph (b)(11)(G)(iii) of the proposed rule provides that, at any time prior to the issuance of its recommendation, the subcommittee may order the parties to supplement the record with any additional information that the subcommittee deems necessary. The rule provides that the subcommittee may also order the appellant and the Department of Member Regulation to file legal briefs.

○ Extensions of Time, Postponements, and Adjournments (Proposed Funding Portal Rule 900(b)(11)(H))

Paragraph (b)(11)(H) of the proposed rule provides that the

subcommittee may shorten any time limits prescribed by these rules for the filing of any papers after obtaining consent of all the parties, and may postpone or adjourn any hearing. The rule provides that the subcommittee may extend any time limits prescribed by these rules for the filing of any papers.

○ Recordation of Hearing (Proposed Funding Portal Rule 900(b)(11)(I))

Paragraph (b)(11)(I) of the proposed rule provides that the hearing shall be recorded and a transcript prepared by a court reporter.

○ Record (Proposed Funding Portal Rule 900(b)(11)(J))

Paragraph (b)(11)(J) of the proposed rule provides that the record shall consist of:

- the decision issued under Funding Portal Rule 900(b);⁶¹
- all documents relied upon in issuing the decision issued under Funding Portal Rule 900(b);⁶²
- the notice of appeal;⁶³
- any other submissions by the appellant and the Department of Member Regulation;⁶⁴
- any evidence considered at the hearing;⁶⁵ and

⁶¹ See proposed Funding Portal Rule 900(b)(11)(J)(i) in Exhibit 5.

⁶² See proposed Funding Portal Rule 900(b)(11)(J)(ii) in Exhibit 5.

⁶³ See proposed Funding Portal Rule 900(b)(11)(J)(iii) in Exhibit 5.

⁶⁴ See proposed Funding Portal Rule 900(b)(11)(J)(iv) in Exhibit 5.

⁶⁵ See proposed Funding Portal Rule 900(b)(11)(J)(v) in Exhibit 5.

➤ the transcript of the hearing and any corrections thereto.⁶⁶

○ Evidence Not Admitted (Proposed Funding Portal Rule 900(b)(11)(K))

Paragraph (b)(11)(K) of the proposed rule provides that evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the Office of General Counsel, as custodian of the record, until the date when FINRA's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

○ Recommendation (Proposed Funding Portal Rule 900(b)(11)(L))

Paragraph (b)(11)(L) of the proposed rule provides that, on the basis of the record, the subcommittee shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the subcommittee, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council.

○ Decision (Proposed Funding Portal Rule 900(b)(11)(M))

Paragraph (b)(11)(M) of the proposed rule provides that, after considering all the matters presented in the request for relief, the Statutory Disqualification Committee's recommendation, the public interest and the protection of investors, the National Adjudicatory Council may affirm, modify, or reverse in writing the Department of Member Regulation's

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See proposed Funding Portal Rule 900(b)(11)(J)(vi) in Exhibit 5.

decision. The rule provides that the National Adjudicatory Council shall provide its proposed decision to the FINRA Board. If the FINRA Board does not call the decision for review, the decision shall be served pursuant to Funding Portal Rule 900(b)(3)(A)(iv) and shall constitute final action of FINRA. A decision to affirm the Department of Member Regulation's decision shall be effective immediately. A decision to approve the Application shall be effective after the SEC issues an order or acknowledgement letter, as the case may be.

- Discretionary Review by the FINRA Board (Proposed Funding Portal Rule 900(b)(12))

- Call for Review by the FINRA Board (Proposed Funding Portal Rule 900(b)(12)(A))

Paragraph (b)(12)(A) of the proposed rule provides that a Governor may call a proposed National Adjudicatory Council decision regarding an eligibility proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b)(12)(B) of the rule, as discussed below.

- 15 Day Period; Waiver (Proposed Funding Portal Rule 900(b)(12)(B))

Paragraph (b)(12)(B) of the proposed rule provides that a Governor shall make his or her call for review not later than the next meeting of the FINRA Board that is at least 15 days after the date on which the FINRA Board receives the proposed written decision of the National Adjudicatory Council. The rule provides that by a unanimous vote of the FINRA

Board, the FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the FINRA Board then in office, the FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

- Review at Next Meeting (Proposed Funding Portal Rule 900(b)(12)(C))

Paragraph (b)(12)(C) of the proposed rule provides that if a Governor calls an eligibility proceeding for review within the period prescribed in paragraph (b)(12)(B) of the rule, the FINRA Board shall review the eligibility proceeding not later than the next meeting of the FINRA Board. The FINRA Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

- Decision of FINRA Board, Including Remand (Proposed Funding Portal Rule 900(b)(12)(D))

Paragraph (b)(12)(D) of the rule provides that, after review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the FINRA Board may remand the eligibility proceeding with instructions.

- Issuance of Decision (Proposed Funding Portal Rule 900(b)(12)(E))

Paragraph (b)(12)(E) of the proposed rule provides that the FINRA Board shall issue and serve its written decision on the disqualified funding portal member, sponsoring funding portal member, or disqualified person, and the Department of Member Regulation pursuant to FINRA Rules 9132

and 9134, as adopted pursuant to proposed Funding Portal Rule 900(a).

The rule provides that the decision shall constitute the final action of FINRA, unless the FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. The rule provides that a decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC-ordered sanctions, an order.

- Application to SEC for Review (Proposed Funding Portal Rule 900(b)(13))

Proposed Funding Portal Rule 900(b)(13) provides that the right to have any action taken pursuant to this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The rule provides that filing of an application for review shall not stay the effectiveness of final action by FINRA, unless the SEC otherwise orders.

G. Arbitration and Mediation (Proposed Funding Portal Rule 1200)

Proposed Funding Portal Rule 1200(a) is designed to provide that funding portal members will be subject to the FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure), unless the context requires otherwise. The rule provides that:

- the term “member” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b);
- the term “associated person” as used in the FINRA Rule 12000 Series, FINRA

Rule 13000 Series and FINRA Rule 14000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b);

- the terms “rules” and “FINRA rules” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include the Funding Portal Rules; and
- the term “customer” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include investors as such term is used throughout the Funding Portal Rules.

Paragraph (b) of the rule addresses predispute arbitration agreements for investor accounts. The rule is a streamlined version of current FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Agreements). Paragraph (b)(1) of the rule provides that any predispute arbitration clause must be highlighted and must be immediately preceded by the following language in outline form:

“This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party’s ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness

statements and other discovery is generally more limited in arbitration than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.”

Paragraph (b)(2)(A) of the rule provides that, in any agreement containing a predispute arbitration agreement, there must be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement must also indicate at what page and paragraph the arbitration clause is located. Paragraph (b)(2)(B) provides that, within 30 days of signing, a copy of the agreement containing any such clause must be given to the investor and the funding portal member must retain proof of delivery or of the investor’s acknowledgement of receipt.

Paragraph (b)(3)(A) of the rule provides that, within ten business days of receipt of the investor’s request, a funding portal member must provide an investor with a copy

of any predispute arbitration clause or investor agreement executed between the investor and the funding portal member. Paragraph (b)(3)(B) provides that, upon request by an investor, a funding portal member must provide the investor with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

Paragraph (b)(4) of the rule provides that no predispute arbitration agreement shall include any condition that:

- limits or contradicts the rules of any self-regulatory organization;
- limits the ability of a party to file any claim in arbitration;
- limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;
- limits the ability of arbitrators to make any award.

Paragraph (b)(5) of the rule provides that, if an investor files a complaint in court against a funding portal member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the funding portal member and the investor, the funding portal member may seek to compel arbitration of the claims that are subject to arbitration. If the funding portal member seeks to compel arbitration of such claims, the funding portal member must agree to arbitrate all of the claims contained in the complaint if the investor so requests.

Paragraph (b)(6) of the rule provides that all agreements must include a statement that “No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in

court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the investor is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

H. Notification to FINRA in Connection with the JOBS Act (Proposed Funding Portal Rule 4518)

As discussed earlier, under Section 302 of the JOBS Act, an intermediary that engages in transactions involving the offer or sale of securities pursuant to the crowdfunding exemption is required to register with the SEC as a funding portal or broker and to register with an applicable self-regulatory organization.⁶⁷ As such, the statute contemplates activity by registered brokers pursuant to Title III of the JOBS Act, subject to specified conditions. In anticipation that registered broker members of FINRA may intend to act as intermediaries for transactions in connection with the crowdfunding exemption, FINRA is proposing to adopt, as part of the FINRA rulebook, new FINRA Rule 4518. The rule would apply to registered broker members. The rule provides that a FINRA member shall notify FINRA, in a manner prescribed by 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

⁶⁷ See Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. § 77d-1(a)(1) and (2)).

under common control with, a funding portal as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

Proposed FINRA Rule 4518 is an addition to the proposal vis-à-vis the proposed rule change as published in the Notice. FINRA believes the requirement is a useful complement to the Funding Portal Rules, given that it would enable FINRA to keep accurate track as to which of its registered broker members, if any, are engaging in activity in connection with Title III of the JOBS Act and thereby assist FINRA in carrying out its regulatory responsibilities.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Act, as amended by the JOBS Act, defines the permissible business activities of funding portals and requires that funding portals must become members of a national securities association. FINRA is the only registered national securities association. The Act requires that FINRA examine for and enforce against registered funding portals rules written specifically for registered funding portals.

⁶⁸ 15 U.S.C. 78o-3(b)(6).

FINRA believes that the proposal is consistent with the Act because FINRA has written the proposed rules specifically for funding portals, seeking to streamline the rules or otherwise appropriately modify them to reflect the limited nature of funding portal business, as set forth in the Act.

The proposed rules address general standards applicable to funding portals (Funding Portal Rule 100), the member application process for funding portals (Funding Portal Rule 110(a)), and business conduct, including standards of commercial honor and principles of trade (Funding Portal Rule 200(a)), prohibitions against the use of manipulative, deceptive or other fraudulent devices (Funding Portal Rule 200(b)) and communications with the public (Funding Portal Rule 200(c)). The proposed rules further address supervisory systems (Funding Portal Rule 300(a)), designation of an executive representative (Funding Portal Rule 300(b)), reporting requirements (Funding Portal Rule 300(c)), contact information requirements (Funding Portal Rule (300(d)), submission of revenue statements to FINRA (Funding Portal Rule 300(e) and requirements as to making and keeping current records listing associated persons of the funding portal (Funding Portal Rule 300(f)). In addition, the rules address the application of FINRA's investigations and sanctions procedures to funding portals (Funding Portal Rule 800(a)), public disclosure by FINRA of information on funding portals (Funding Portal Rule 800(b)), the application of FINRA's Code of Procedure to funding portals (Funding Portal Rule 900(a)), eligibility proceedings in connection with statutory disqualifications under the Act (Funding Portal Rule 900(b)), the application of FINRA's Arbitration and Mediation Procedures to funding portals (Funding Portal Rule 1200(a) and rules governing predispute arbitration agreements for investor accounts (Funding

Portal Rule 1200(b)).

Consistent with the Act, the proposed rules prohibit fraudulent and manipulative acts and practices and require that funding portal members observe just and equitable principles of trade, thereby conducing to the protection of investors. The proposal is consistent with the public interest because the streamlined requirements as set forth in the proposal, considered in combination with and in view of the restrictions imposed on funding portal business by the Act, are consistent with the Congressional intent of the JOBS Act, which sought to minimize regulatory burdens on funding portals and thereby enable them to play a role in increasing American job creation and economic growth through the new capital raising methods of crowdfunding.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Act, as amended by the JOBS Act, limits the permissible business activities of funding portals and requires that funding portals must become members of a national securities association. FINRA is the only registered national securities association. The Act requires that FINRA examine for and enforce against registered funding portals rules written specifically for funding portals. As such, FINRA has designed the proposed rules to streamline or otherwise appropriately modify existing FINRA rules to reflect the limited scope of business activity permitted to funding portals under the JOBS Act.

FINRA believes that the streamlined approach should minimize the potential costs and burdens on prospective funding portal members at this early stage of development of funding portal business, thereby helping to effectuate the Congressional intent to enable

funding portals to play a role in increasing American job creation and economic growth through the new capital raising methods of crowdfunding. Further, FINRA believes the streamlined approach is appropriate given that regulatory experience with funding portals is at an early stage. Following are several requirements that FINRA has streamlined for funding portals vis-à-vis requirements that currently apply to broker-dealers:

- The proposed membership application process (MAP) under Funding Portal Rule 110(a) shortens the time frame for the Department of Member Regulation to provide a decision on a funding portal MAP to 60 days, versus 180 days under the broker-dealer MAP rules. FINRA believes that this shortened time frame is appropriate both in view of the limited nature of funding portal business and in the interest of enabling funding portals to begin their operations expeditiously, thereby supporting a basic purpose of the JOBS Act.
- The proposed MAP streamlines and consolidates, from 14 to five, the NASD Rule 1010 Series standards for granting or denying a funding portal's membership application. FINRA believes that this is consistent with the rationale underlying the shortened time frame for the funding portal MAP, as discussed above, which should ameliorate potential burdens on funding portal members.
- The proposed Form FP-NMA and Form FP-CMA require significantly less information than the broker-dealer counterpart forms, which FINRA believes is consistent with the limited scope of business to be conducted by funding portals. FINRA believes that, similar to the shortened MAP time frame and

streamlined standards for granting or denying an application, this again ameliorates potential burdens on funding portal members.

- The proposal imposes no broker-dealer equivalent licensing or examination requirement on associated persons of funding portal members. FINRA believes that imposing examination and licensing requirements on funding portal members at this stage is not necessary in light of the limited activities of funding portals. However, as FINRA gains experience under the proposed rules, FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is merited.
- The proposal as set forth in Regulatory Notice 13-34 would have required funding portal members to maintain fidelity bond coverage. As discussed earlier, FINRA is not proposing at this time a fidelity bond requirement. FINRA will monitor developments in this area and determine whether a subsequent rulemaking is merited.
- FINRA is not proposing at this time net capital or similar financial responsibility requirements for funding portals. FINRA believes that this approach is appropriate at this time in view of the limited nature of funding portal business, in particular the JOBS Act prohibition against funding portals holding, managing, possessing, or otherwise handling investor funds and securities. Again, however, FINRA will monitor developments in this area and determine whether a subsequent rulemaking is merited.

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rules, the regulatory objective of the

rulemaking, the economic baseline of analysis, and the economic impacts.

A. Need for the Rules

Section 3(h)(2) of the Exchange Act,⁶⁹ as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals.

Under Title III of the JOBS Act, a funding portal is a new type of intermediary the business activities of which are of limited scope, as defined by the JOBS Act, relative to entities that register as brokers. Among other things, the JOBS Act adds Section 4(a)(6) to the Securities Act,⁷⁰ which creates an exemption (the “crowdfunding exemption”) from registration requirements under the Securities Act for securities offered and sold pursuant to the crowdfunding exemption. Broadly, the crowdfunding exemption permits an issuer to offer and sell up to \$1 million in securities over a 12-month period. The amount of any such security sold to an investor by an issuer is not permitted to exceed specified thresholds. Further, the issuer must comply with other specified requirements under the JOBS Act and Commission rules. Any offering pursuant to the crowdfunding exemption must be conducted through a broker or a funding portal that is registered with the SEC.

Under the JOBS Act, a funding portal must become a member of a national securities association that is registered under Section 15A of the Exchange Act. FINRA is the only national securities association that is registered under Section 15A of the Exchange Act.

⁶⁹ 15 U.S.C. 78c(h)(2).

⁷⁰ 15 U.S.C. 77d(a)(6).

On October 23, 2013, the SEC proposed rules⁷¹ to require registration of funding portals and to implement the provisions of Title III of the JOBS Act. Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding as adopted by the SEC and to apply for FINRA membership.

B. Regulatory Objective

The crowdfunding exemption is designed to help provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The exemption creates a regulatory pathway for funding portals to facilitate the offer and sale of securities, as registered funding portals, without being required to register with the SEC as brokers,⁷² provided they comply with specified limitations on their business activity.⁷³

FINRA's proposal aims to create a streamlined set of regulations for funding portals with rules that reflect the limited scope of activity permitted by funding portals while also maintaining investor protection.

C. Economic Baseline

In the absence of FINRA's Funding Portal Rules, intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding

⁷¹ See note 8 supra.

⁷² Exchange Act Section 3(h)(1) (15 U.S.C. 78c(h)(1)) directs the Commission by rule to exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under Exchange Act Section 15(a)(1) (15 U.S.C. 78o(a)(1)), provided that the funding portal: (1) remains subject to the examination, enforcement and other rulemaking authority of the Commission; (2) is a member of a registered national securities association; and (3) is subject to other requirements that the Commission determines appropriate.

⁷³ See note 6 supra.

exemption would be required to register with the SEC as brokers. The FINRA rules for registered brokers are intended to address a wider range of activities than is permissible to funding portals, and would place restrictions and costs not associated with such firms' crowdfunding activities. If all crowdfunding intermediaries were subject to the full requirements that apply to registered brokers, there might be several unintended consequences. First, the regulatory costs to operate the crowdfunding intermediary would likely be high, potentially restricting the number of registered crowdfunding intermediaries. These costs would include, but are not limited to, capital requirements, compliance costs and other restrictions on activities. Second, and relatedly, higher compliance costs may limit the activities of those crowdfunding intermediaries that do choose to register as these may restrict financial and other available resources. Third, limited numbers of registered crowdfunding intermediaries may reduce competition in the crowdfunding market and lead to less efficient capital allocation.

In addition to crowdfunding intermediaries, the absence of the proposed rules may also have an impact on: issuers, typically startups and small businesses seeking to raise capital by issuing securities; investors that purchase or may consider purchasing securities in such offerings; and other capital providers, broker-dealers and finders that currently participate in private offerings.

For the issuers seeking to raise capital through securities-based crowdfunding in reliance on the crowdfunding exemption, limited numbers of registered crowdfunding intermediaries may result in higher capital raising costs, decreased opportunities for selling securities through a given registered funding portal, or an aggregate reduction in the capacity of registered crowdfunding intermediaries. Higher regulatory costs to

registered intermediaries may also be passed on to issuers. All of these impacts would collectively make it more difficult for startups and small businesses to efficiently find capital for their operations.

Limited numbers of registered intermediaries may also limit investor access to securities-based crowdfunding offerings. In addition, higher capital raising costs to issuers and higher regulatory costs to registered intermediaries could be passed on to potential investors.

The absence of the proposed Funding Portal Rules also might have an effect on broker-dealers and finders participating in private offerings. As discussed above, in the absence of FINRA's Funding Portal Rules, issuers intending to raise capital in reliance on the crowdfunding exemption may face higher costs. Some of these issuers may instead choose to raise capital through private offerings with the assistance of broker-dealers and finders. This could increase the revenue of finders and broker-dealers in the market for private offerings, but less competition in the fundraising market and greater restrictions on participation of investors may lead to less efficient allocation of capital.

D. Economic Impacts

The proposed rules are intended to provide investors with appropriate protections by applying the relevant controls and oversight to the limited activities of funding portals. FINRA recognizes that there are potential costs associated with compliance with the proposed rules. Prospective funding portal members will need to become members of FINRA and establish compliance procedures to comply with the proposed rules, both on an initial and ongoing basis. The proposed rules may also have an impact on other market participants such as issuers and investors. Benefits of the proposed rules may

include greater competition among crowdfunding intermediaries, better market oversight, and investor protection for those investing in offerings made through funding portals. Costs and benefits associated with FINRA's proposed rules are only a subset of the costs and benefits associated with securities-based crowdfunding regulations. Regulatory outcomes will depend on many other factors including the SEC rules.

1. The SEC's Economic Analysis

The SEC's Regulation Crowdfunding Proposal⁷⁴ includes a detailed economic analysis that estimates the potential costs and benefits to various market participants. However, the scope of the SEC's proposed Regulation Crowdfunding is broader than the scope of FINRA's proposed rules. Regulation Crowdfunding, as proposed, prescribes rules governing the offer and sale of securities under the new crowdfunding provisions. It also provides a framework for the regulation of registered funding portals and brokers that issuers are required to use as intermediaries. In addition, it exempts securities sold pursuant to the crowdfunding exemption from registration requirements under the Securities Act. As a result, the SEC's economic analysis examines the impacts of securities-based crowdfunding in reliance on the crowdfunding exemption as a new fundraising channel. For example, it estimates the costs for registered brokers, and brokers that prospectively would register, to comply with the various requirements to engage in securities-based crowdfunding transactions. The SEC's economic analysis also estimates the costs for an intermediary to develop a platform to engage in such transactions.

In contrast, FINRA has written the proposed rules specifically for funding portals.

⁷⁴ See note 8 supra.

In the absence of FINRA's Funding Portal Rules, securities-based crowdfunding in reliance on the crowdfunding exemption is still possible under the SEC rules, though intermediaries intending to facilitate such transactions would need to register as brokers.

2. Benefits

FINRA's proposed Funding Portal Rules will make it possible for intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption to register as funding portals, which is a lower cost alternative to registering as brokers. The proposed rules encourage funding portals to become members of FINRA as they provide a streamlined set of regulations that are tailored to the activities of funding portals and avoid the imposition of burdens and costs not associated with permissible funding portal activity. The proposed rules will likely increase the number of registered crowdfunding intermediaries, promote competition, and in turn potentially reduce costs to issuers and investors.

Because funding portals will be required to comply with both the SEC's and FINRA's rules if adopted, FINRA's Funding Portal Rules will create additional regulatory oversight of registered funding portals and improve the SEC's ability to effectively regulate registered funding portals' activities. FINRA believes that the proposed rules will reduce the risk of misconduct and fraud and help create a healthy marketplace in which issuers are more comfortable using securities-based crowdfunding to raise capital and investors are more willing to participate.

3. Costs to Funding Portals

FINRA recognizes that there will be costs to prospective funding portal members associated with each major set of provisions below. Because the proposed Funding

Portal Rules have been streamlined to reflect the limited scope of activity permitted to funding portals, the compliance costs would be higher in the absence of the proposed rules where crowdfunding intermediaries would have to register as broker-dealers.

a. Registration and Other Costs

Certain costs to prospective funding portals are estimated in the economic impact analysis of FINRA's proposed rule change to adopt Section 15 of Schedule A to the FINRA By-Laws governing fees for funding portal members.⁷⁵

b. Other Compliance Costs: Major Sets of Provisions

Funding Portal Conduct

Under proposed Funding Portal Rule 200, prospective funding portal members would need to develop and implement policies and processes designed to meet high standards of commercial honor and principles of trade, prevent use of manipulative, deceptive or other fraudulent devices, and comply with the specified proposed requirements on communications with the public.

Funding Portal Compliance

Proposed Funding Portal Rule 300(a) requires that each funding portal member establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules.

Proposed Funding Portal Rule 300(b) requires that each funding portal member must designate to FINRA an executive representative.

Proposed Funding Portal Rule 300(c) requires funding portal members to report to

⁷⁵ See note 12 supra.

FINRA (and sets forth the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events. Funding portal members would need to establish policies and processes to detect the events that are required to be reported and ensure prompt reporting of the events.

Proposed Funding Portal Rule 300(d) is designed to require funding portal members to report to FINRA all contact information required by FINRA through such means as FINRA may specify.

Proposed Funding Portal Rule 300(e) requires each funding portal member to report to FINRA the member's gross revenue on Form FP-Statement of Revenue.

Proposed Funding Portal Rule 300(f) requires each funding portal member to make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding portal member where the associated person regularly conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. The rule requires a funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place.

The proposal would not require funding portals to implement an anti-money laundering program at this time. Alternatively, broker-dealers that operate a platform under the proposed rules would continue to have anti-money laundering program obligations, and those obligations would extend to any platform that they operate. While this represents an additional cost to registered broker-dealers over new entrants that register strictly as funding portals, these costs are likely small because broker-dealers are

already required to have in place all the requirements for an anti-money laundering program.

Investigations and Sanctions

Proposed Funding Portal Rule 800(a) provides that except for FINRA Rules 8110, 8211, 8213 and 8312, all funding portal members shall be subject to the FINRA Rule 8000 Series unless the context requires otherwise.

Proposed Funding Portal Rule 800(b) addresses specified information that FINRA shall make available to the public. Proposed Funding Portal Rule 800(b)(2) provides that FINRA shall make available to the public information filed by a funding portal member 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)⁷⁶ of the Exchange Act, and that the funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

Application of FINRA Rule 9000 Series to Funding Portals

Proposed Funding Portal Rule 900(a) provides that except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series, all funding portal members shall be subject to the FINRA Rule 9000 Series unless the context requires otherwise.

Proposed Funding Portal Rule 900(b) sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and

⁷⁶ 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Act sets forth the definition of “statutory disqualification.”

for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules.

Arbitration and Mediation

Proposed Funding Portal Rule 1200(a) is designed to provide that funding portal members will be subject to the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series, unless the context requires otherwise. Proposed Funding Portal Rule 1200(b) addresses predispute arbitration agreements for investor accounts.

c. Estimate of Costs

FINRA understands that the staffing and scope of the organization necessary to provide crowdfunding services may be comparable to that of a small broker-dealer. As such, FINRA looks to its experience with a sample of smaller broker-dealers to estimate the potential costs associated with the proposed rules. The sample firms do not appear to have a heavy investment in dedicated compliance infrastructure. For example, the designated contacts of these firms for FINRA tend to be a managing principal, who often serves several other roles such as executive representative, anti-money laundering representative, and continuing education representative. Required, routine compliance activities (such as annual certifications, email review, employee trading account reviews, etc.) are generally performed by these principals. In several instances, a firm will rely on a third-party compliance consulting firm to help with its general compliance functions. Several of the sample firms employ a model where their financial and operations principals are employed off-site, work part time or hold multiple registrations with different member firms. FINRA estimates that less than 50% of one internal person's

time is typically spent on compliance activities at each of these firms. FINRA understands from a small sample of these firms that they currently pay \$1,000 to \$1,500 per month for compliance consulting services.

FINRA also understands that there are a few member firms that already offer private placement platforms for accredited investors. FINRA understands from various reports that these types of firms may have two full-time compliance officers and spend about \$100,000 to \$150,000 annually on ensuring that all regulations are followed. FINRA believes these estimates are likely for the full scope of broker-dealer activity and include the costs associated with compliance activities not covered by the rule proposal, and thus reflects compliance costs for activities beyond the scope of the permitted business activities of funding portals.

4. Costs to FINRA

FINRA has identified costs that it would likely incur as a result of the proposed rules. Specifically, FINRA needs to adapt its current regulatory infrastructure to manage regulatory processes for funding portals, including regulatory support to members and potential challenges to its decisions. To minimize these burdens, FINRA intends to use as much as possible of its in-place systems and processes.

5. Impact on Competition

In the absence of FINRA's Funding Portal Rules, intermediaries intending to facilitate securities-based crowdfunding transactions in reliance on the crowdfunding exemption are required to register with the SEC as brokers. As shown by the SEC's economic analysis in the Regulation Crowdfunding Proposal, the compliance cost associated with broker registration is expected to exceed the compliance cost associated

with funding portal registration. By appropriately limiting the rule set and attendant compliance costs to match the permitted business activities of funding portals, FINRA's Funding Portal Rules will likely allow more registered intermediaries in the market and promote competition in the provision of crowdfunding services among funding portals and broker-dealers.

As noted above, funding portals may serve as a substitute for some private offerings currently offered through broker-dealers under other exemptions from registration, such as Regulation D (17 C.F.R. 230.500 through 230.508). By enabling prospective funding portals to become members of FINRA and thereby engage in funding portal business, the proposed rules may provide a more efficient form of capital raising by issuers, resulting in a loss of underwriting business in these other private offering platforms. FINRA first notes that these private offerings serve only as a limited substitute for offerings pursuant to the crowdfunding exemption, as they have significant limitations on investor participation that make them inappropriate for many of the investments that could be made available under the crowdfunding exemption. Secondly, FINRA notes that any competitive impacts that might arise from substitution across platforms is mitigated by the ability of any broker-dealer to offer a crowdfunding platform or register a funding portal affiliate, and thus compete to retain the business.

Increasing competition among financial intermediaries who might assist startups and small businesses in obtaining capital will likely lead to lower costs for some issuers, which may enable more startups and small businesses to rely on securities-based crowdfunding as a new source of capital. An increased number of issuers in the fundraising market may promote competition and efficient allocation of capital among

crowdfunding issuers.

Increased competition among crowdfunding intermediaries and issuers should also lead to more investment opportunities and lower costs for investors. More investors and thus more capital may be made available to startups and small businesses, helping to achieve the regulatory objective of the crowdfunding provisions of the JOBS Act.

6. Alternatives

As discussed above, FINRA understands that under the SEC's proposed rules, securities-based crowdfunding pursuant to the crowdfunding exemption can occur in brokers that are members of a self-regulatory organization. As such, FINRA considered applying its full rule set to intermediaries providing crowdfunding services. FINRA determined that this approach would impose costs not associated with the activities of the intermediaries and would likely have negative consequences for market efficiency and competition. FINRA also considered the alternative of requiring persons associated with funding portal members to register with FINRA and decided it would not be necessary at this early stage in light of the limited activities of funding portals. As FINRA gains experience in regulating funding portal member activities, FINRA will reassess the alternative based on the nature and scope of the business activities of funding portals.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Regulatory Notice 13-34 (October 2013) (the "Notice"). Seven comments were received in response to the Notice. A copy of the Notice is attached as Exhibit 2a. A list of commenters⁷⁷ is attached as

⁷⁷ All references to commenters are to the commenters as listed in Exhibit 2b.

Exhibit 2b. Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

Some commenters expressed concerns that the rules as proposed in the Notice would impose too many requirements and, in combination with the requirements set forth in the SEC's Regulation Crowdfunding Proposal, would be costly and burdensome for prospective funding portals.⁷⁸ In contrast, other commenters expressed concern that the proposal should impose more requirements such as those that apply to current broker-dealer members or should include other requirements or specified guidelines for purposes of oversight of funding portal activities.⁷⁹ Commenters' specific suggestions are discussed below.

1. Fidelity Bond

As discussed earlier, the proposal as published in the Notice would have required that funding portal members maintain fidelity bond coverage. Two commenters suggested that FINRA should eliminate or tailor the proposed rule.⁸⁰ One of the commenters suggested that, because the JOBS Act prohibits funding portals from holding, managing, possessing or otherwise handling investor funds or securities, funding portals pose limited risk in this area and the fidelity bond requirement would impose an unnecessary cost on funding portals.⁸¹ One of the commenters suggested that, to help save on premiums for prospective funding portals, fidelity bond coverage should not be

⁷⁸ CyberIssues, Heritage and Polanco.

⁷⁹ FSA Institute, FSI, NASAA and Wulff.

⁸⁰ CyberIssues and Heritage.

⁸¹ Heritage.

required until a funding portal member's membership application is approved.⁸² On the other hand, two commenters suggested greater stringency in this area.⁸³ One commenter suggested that the proposed fidelity bond requirement would not be sufficient for purposes of oversight and that the proposed requirement should include financial responsibility requirements.⁸⁴ One commenter suggested that the proposal should be revised to include fines for failure to maintain adequate fidelity bonds.⁸⁵

In response, as discussed earlier, FINRA is not proposing the fidelity bond requirement as part of this rulemaking. FINRA believes that this approach is appropriate in the interest of reducing potential burdens on prospective funding portal members given the limited nature of funding portal business and given that regulatory experience with funding portals is developing.⁸⁶

2. Anti-Money Laundering Program

As discussed earlier, the proposal as published in the Notice included a proposed requirement that funding portal members implement a written anti-money laundering

⁸² CyberIssues.

⁸³ NASAA and Wulff.

⁸⁴ Wulff.

⁸⁵ NASAA.

⁸⁶ Similarly, given the limited nature of funding portal business, in particular the prohibition against funding portals holding, managing, possessing or otherwise handling investor funds or securities, and given that funding portal business is at an early stage of development, FINRA is not proposing net capital or similar financial responsibility requirements for funding portal members at this time. As discussed earlier, FINRA will monitor the development of this area and determine whether a subsequent rulemaking regarding fidelity bonds or other financial responsibility requirements is merited.

program. Two commenters opposed the proposed requirement.⁸⁷ One suggested that the anti-money laundering rules are too complex and expensive to comply with, and that the rule is unnecessary because funding portals are prohibited from holding, managing, possessing or otherwise handling investor funds or securities and are thereby not in a position to facilitate money laundering.⁸⁸ One commenter suggested that imposing the requirement on funding portals would be duplicative of functions already performed for instance by institutions where investor funds would be held in escrow.⁸⁹ On the other hand, one commenter expressed support for the proposed requirement.⁹⁰

In response, as discussed earlier, the BSA and the implementing regulations thereunder apply to brokers and dealers in securities that are registered or required to be registered with the Commission. The BSA does not apply to funding portals at this time. Accordingly, FINRA is not proposing an anti-money laundering requirement at this time.

3. Additional Specific Comments

a. Central Registration Depository

One commenter suggested that the proposal should expressly mandate that funding portal members file the SEC's Form Funding Portal and all related forms through the Central Registration Depository, similar to current FINRA Rule 1010(a).⁹¹ In response, FINRA believes that it is sufficient, and consistent with the need for regulatory

⁸⁷ CyberIssues and Heritage.

⁸⁸ Heritage.

⁸⁹ CyberIssues.

⁹⁰ CFA Institute.

⁹¹ NASAA.

flexibility, that the proposal provides for submission of specified information by means and format prescribed by FINRA.⁹² FINRA is in the process of developing systems for submission of specified information tailored to prospective funding portal members which, consistent with the Funding Portal Rules, FINRA will prescribe prior to the implementation of the proposal.

b. Associated Persons of a Funding Portal Member

One commenter suggested that FINRA should narrow the proposed definition of associated person of a funding portal member as set forth under proposed Funding Portal Rule 100(b).⁹³ The commenter suggested excluding from the definition employees of a funding portal whose functions exclusively relate to providing various services to issuers. In response, FINRA notes that the proposed definition is largely based on the current definition under the FINRA By-Laws that applies to broker-dealers and is meant to ensure among other things that the specified persons are subject to FINRA rules. FINRA notes that services that funding portals provide to issuers will potentially be an important component of the business model of many funding portals. Accordingly, FINRA does not propose to modify the definition.

Two commenters suggested that FINRA should institute examination and licensing requirements for at least some associated persons of funding portal members.⁹⁴ In response, FINRA notes that the funding portal business is at an early stage of

⁹² See, e.g., proposed Funding Portal Rule 110(a)(3)(A), regarding submission of Form FP-NMA, and proposed Funding Portal Rule 110(a)(4)(B), regarding submission of Form FP-CMA.

⁹³ CyberIssues.

⁹⁴ NASAA and Wulff.

development. Further, as discussed earlier, FINRA notes that the scope of activities permitted to funding portals is limited under the JOBS Act. Accordingly, FINRA is not imposing examination and licensing requirements on associated persons of funding portals at this time. However, as FINRA gains experience under the proposed rules, FINRA will consider whether additional rulemaking with respect to examination and licensing requirements is merited.

c. Application of Additional Rules

Two commenters suggested that FINRA should apply to funding portal members additional rules from the FINRA rulebook that currently apply to broker-dealer members or that FINRA should duplicate, within the proposed Funding Portal Rules, standards adopted by the SEC in Regulation Crowdfunding.⁹⁵ One commenter proffered several current FINRA rules governing broker-dealer members that the commenter suggested should be replicated within the proposed Funding Portal Rules to address potential conflicts of interest, such as the prohibition against guarantees and sharing in accounts under FINRA Rule 2150, as well as elements under FINRA Rule 2210 (Communications with the Public), 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).⁹⁶ The commenter further suggested that FINRA should adopt a distinct recordkeeping rule for funding portal members over and above the recordkeeping rule for

⁹⁵ CFA Institute and NASAA.

⁹⁶ NASAA.

funding portals adopted by the SEC.⁹⁷ One commenter suggested that the proposed Funding Portal Rules should duplicate rule language in the SEC's Regulation Crowdfunding aimed at limiting, in conformity with requirements of Title III of the JOBS Act,⁹⁸ the activities of funding portals, such as prohibiting funding portals from offering investment advice or recommendations.

In response, FINRA has stated in the Notice and in this filing its intent 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. Further, FINRA will enforce any rules for funding portals adopted by the SEC. As such, FINRA has indicated that its rules should not duplicate any rules adopted by the SEC in this area.⁹⁹ Title III of the JOBS Act sets specified limits on the activities of funding portals, for example, by expressly prohibiting funding portals from offering investment advice or recommendations and by prohibiting funding portals from holding, managing, possessing or otherwise handling investor funds or securities, which the SEC proposed to implement by rule.¹⁰⁰ The SEC has proposed to address such investor protection issues as measures to reduce the risk of fraud,¹⁰¹ account opening,¹⁰² requirements with respect to investor

⁹⁷ See proposed Regulation Crowdfunding Rule 404.

⁹⁸ See note 6 supra.

⁹⁹ See Regulatory Notice 12-34 (July 2012).

¹⁰⁰ See proposed Regulation Crowdfunding Rule 300(c)(2).

¹⁰¹ See proposed Regulation Crowdfunding Rule 301.

¹⁰² See proposed Regulation Crowdfunding Rule 302.

transactions,¹⁰³ payments to third parties,¹⁰⁴ and permissible communication channels.¹⁰⁵

All funding portal members of FINRA will be subject to these rules if they are adopted by the SEC. Further, as discussed earlier, FINRA is proposing specified conduct and compliance rules, also aimed at investor protection.¹⁰⁶ FINRA does not believe that it serves a regulatory purpose to reduplicate in the Funding Portal Rules standards that the SEC has proposed to address in its rulemaking, or to otherwise duplicate in multiple iterations prohibitions against specified activities already set forth under applicable statutes, proposed SEC rules or the proposed FINRA Funding Portal Rules. As such, FINRA is not proposing at this time the additional suggested rules and standards. However, FINRA may propose 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.

d. Miscellaneous

One commenter proffered suggestions to amend FINRA's arbitration procedures.¹⁰⁷ While the comment is outside the scope of the proposed rule change, FINRA notes that proposed Funding Portal Rule 1200 addresses arbitration issues for the purpose of ensuring that funding portal members shall be subject to the existing FINRA rules in this area, unless the context requires otherwise, and for streamlining the existing

¹⁰³ See proposed Regulation Crowdfunding Rule 303.

¹⁰⁴ See proposed Regulation Crowdfunding Rule 305.

¹⁰⁵ See proposed Regulation Crowdfunding Rule 402.

¹⁰⁶ See, e.g., proposed Funding Portal Rule 200 and Rule 300 in Exhibit 5.

¹⁰⁷ NASAA.

predispute arbitration rule (FINRA Rule 2268) as appropriate for funding portals.

One commenter suggested that FINRA should provide guidance regarding the scope of liability for firms and advisors when clients make inquiries regarding investments in crowdfunding offerings.¹⁰⁸ The commenter suggested the SEC and FINRA should provide waiver of liability language for advisors and an educational website on crowdfunding, and that FINRA should undertake a retrospective review of the Funding Portal Rules. In response, FINRA welcomes retrospective review of rules and has committed to such review.¹⁰⁹ Further, FINRA notes that it makes substantial commitments to investor education and has a robust and vigorous investor education program. FINRA welcomes further dialogue on these issues as funding portal business develops under any rules implemented by the SEC and the FINRA Funding Portal Rules. FINRA does not propose at this time to provide waiver of liability language as outside the scope of the proposed rule change.

One commenter requested that FINRA provide a template for supervisory systems for funding portal members to follow.¹¹⁰ In response, FINRA notes that under the proposed rules, it is the responsibility of a funding portal member to establish and maintain a system to supervise the activities of each associated person of the funding

¹⁰⁸ FSI Institute.

¹⁰⁹ See, e.g., Regulatory Notice 14-14 (April 2014) (seeking comment in connection with retrospective review of the Communications with the Public rules); Regulatory Notice 14-15 (April 2014) (seeking comment in connection with retrospective review of the gifts and gratuities and non-cash compensation rules); and Regulatory Notice 15-10 (March 2015) (seeking comment in connection with retrospective review of FINRA's membership application rules).

¹¹⁰ CyberIssues.

portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. Funding portal members will be expected to be mindful of their supervisory obligations under the FINRA Funding Portal Rules and other applicable rules to establish and maintain a supervisory system accordingly.

One commenter suggested that Form FP-NMA should not require FP Applicants to submit copies of contracts or agreements relating to business activities of the FP Applicant.¹¹¹ FINRA disagrees, as such information is directly relevant to assessing an FP Applicant for purposes of FINRA membership. Further, FINRA notes that the MAP as set forth under proposed Funding Portal Rule 110 already reflects extensive streamlining so as to tailor requirements to the permitted business of funding portal members. Accordingly, FINRA does not propose to make the suggested change. The same commenter sought clarification as to whether, under proposed Funding Portal Rule 1200(b), funding portal members are required to use predispute arbitration agreements with investors. FINRA notes that neither proposed Funding Portal Rule 1200(b), nor the FINRA rule upon which it is based (FINRA Rule 2268), impose such requirements.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

¹¹¹ CyberIssues.

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-040 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-040 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹²

Robert W. Errett
Deputy Secretary

¹¹² 17 CFR 200.30-3(a)(12).

Regulatory Notice

13-34

Jumpstart Our Business Startups (JOBS) Act

FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms

Comment Period Expires: February 3, 2014

Executive Summary

FINRA is soliciting public comment on a set of proposed rules—referred to as the Funding Portal Rules—and related forms for SEC-registered funding portals¹ that become FINRA members pursuant to the crowdfunding provisions of the JOBS Act.²

The text of the proposed rules is available in [Attachment A](#) and the related forms are available as [Attachments B through E](#).

Questions regarding this *Notice* should be directed to:

- ▶ Patricia Albrecht, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8026; or
- ▶ Adam Arkel, Associate General Counsel, OGC, at (202) 728-6961.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by February 3, 2014.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:
 Marcia E. Asquith
 Office of the Corporate Secretary
 FINRA
 1735 K Street, NW
 Washington, DC 20006-1506

October 2013

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Crowdfunding
- ▶ Funding Portals
- ▶ JOBS Act

Referenced Rules & Notices

- ▶ FINRA By-Laws
- ▶ FINRA Rule 2010
- ▶ FINRA Rule 2020
- ▶ FINRA Rule 2210
- ▶ FINRA Rule 2268
- ▶ FINRA Rule 3310
- ▶ FINRA Rule 4360
- ▶ FINRA Rule 4530
- ▶ FINRA Rule 8000 Series
- ▶ FINRA Rule 8312
- ▶ FINRA Rule 9000 Series
- ▶ FINRA Rule 9520
- ▶ FINRA Rule 12000 Series
- ▶ FINRA Rule 13000 Series
- ▶ FINRA Rule 14000 Series
- ▶ NASD Rule 1010 Series
- ▶ NASD Rule 1160
- ▶ NASD Rule 3010
- ▶ NTM 03-73
- ▶ Regulatory Notice 12-34

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.³

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be filed with the SEC pursuant to SEA Section 19(b).⁴

Background & Discussion

The JOBS Act, enacted in 2012 with the goal of increasing American job creation and economic growth, contains key provisions relating to securities offered or sold through “crowdfunding.”⁵ Funding portals that engage in crowdfunding on behalf of issuers relying on the JOBS Act’s “crowdfunding exemption”⁶ must register with the SEC and become a member of a national securities association.⁷ The JOBS Act prohibits funding portals from a variety of activities, including offering investment advice or recommendations, soliciting transactions for securities displayed on their websites, compensating employees for securities solicitations, and holding investor funds or securities.

FINRA is proposing rules and related forms for funding portals. This proposal, which reflects the rules recently proposed by the SEC, would implement in our rules the provisions of the JOBS Act. FINRA has streamlined the proposed rules to the extent possible to reflect the limited scope of activity permitted by funding portals while also maintaining investor protection.

In developing the proposed rules, FINRA has considered the comments that we received in response to [Regulatory Notice 12-34](#) (FINRA Requests Comment on Proposed Regulation of Crowdfunding Activities). In January, FINRA made available on its website the [Interim Form for Funding Portals](#) (IFFP), an online form for intermediaries that intend to apply for membership with FINRA as funding portals. Prospective funding portal members were invited, on a voluntary basis, to submit information to FINRA using the IFFP and thereby help to inform FINRA’s rulemaking process.⁸

The proposed Funding Portal Rules consist of a set of seven rules—Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200⁹—and related forms. Following are highlights of the proposed requirements.

General Standards (Funding Portal Rule 100)

Proposed Funding Portal Rule 100 provides that all funding portal members (*i.e.*, including both funding portals and their associated persons) shall be subject to the FINRA By-Laws, unless the context requires otherwise, and the Funding Portal Rules. The rule further sets forth basic definitions modified as appropriate to apply to funding portal members.

Funding Portal Application (Funding Portal Rule 110, Form FP-NMA, Form FP-CMA and FP-SD Schedule)

Proposed Funding Portal Rule 110(a) sets forth the membership application process (MAP) for funding portals. The membership application process will enable FINRA to assess whether funding portals are capable of complying with applicable regulations. The rule is based on the current NASD Rule 1010 Series membership rules that apply to broker-dealers. However, the process for funding portals is simplified to reflect the limited nature of their business.

Proposed Funding Portal Rule 110(a) thus would tailor the NASD Rule 1010 Series by:

- ▶ shortening the time frames for key events. For instance, the time frame for the Department of Member Regulation (Department) to provide a decision on a funding portal MAP application is 60 days after the application is filed (as opposed to 180 days in the broker-dealer MAP rules);
- ▶ streamlining and consolidating, from 14 to five, the NASD Rule 1010 Series standards for granting or denying an application. These five consolidated standards address a funding portal's: (1) ability to comply with applicable federal securities laws, rules and regulations and FINRA's Funding Portal Rules; (2) contractual or other arrangements and business relationships necessary to initiate operations; (3) supervisory system; (4) direct and indirect funding sources; and (5) recordkeeping system;
- ▶ providing that the membership interview may be conducted by video conference (or such other means as FINRA may specify);
- ▶ streamlining the process for appealing the Department's decision by reducing applicable filing and response time frames from 25 days for broker-dealers to 14 days and eliminating provisions providing for an appellate hearing; and
- ▶ narrowing the changes in ownership or control for which a funding portal member would be required to apply for approval.

Funding portals will apply for membership using proposed Form FP-NMA¹⁰ and for changes in ownership and control using Form FP-CMA.¹¹ They will submit statutory disqualification information using the FP-SD Schedule.¹² The Form FP-NMA and Form FP-CMA require significantly less information than the broker-dealer counterpart forms, consistent with the limited scope of business to be conducted by funding portals.¹³

Proposed Funding Portal Rule 110(b) sets forth a streamlined version of FINRA Rule 4360 (Fidelity Bonds) and requires funding portal members to maintain fidelity bond coverage. The rule addresses among other things the minimum required coverage, deductible provision and notification of cancellation, termination or substantial modification of coverage.

Funding Portal Conduct (Funding Portal Rule 200)

Based in large part on FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade), proposed Funding Portal Rule 200(a) requires a funding portal member, in the conduct of its business, to observe high standards of commercial honor and just and equitable principles of trade.

Proposed Funding Portal Rule 200(b), based in large part on FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), prohibits a funding portal member from effecting any transaction in, or inducing the purchase or sale of, any security by means of, or by aiding or abetting,¹⁴ any manipulative, deceptive or other fraudulent device or contrivance.

Proposed Funding Portal Rule 200(c) is an abbreviated version of FINRA Rule 2210 (Communications with the Public), essentially prohibiting false and misleading statements.

Funding Portal Compliance (Funding Portal Rule 300)

A funding portal member is required under proposed Funding Portal Rule 300(a) to establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations and with the Funding Portal Rules. The rule is a streamlined version of current NASD Rule 3010 (Supervision) and is designed to permit funding portal members flexibility to tailor their supervisory systems to their business models.

Proposed Funding Portal Rule 300(b) requires each funding portal member to implement a written anti-money laundering (AML) program. This is consistent with the SEC's proposed requirements and Chapter X of Title 31 of the Code of Federal Regulations.¹⁵ Accordingly, the proposed rule is similar to current FINRA Rule 3310 (Anti-Money Laundering Compliance Program); however, the proposed rule contemplates that all funding portals will be eligible to conduct the required independent testing for compliance every two years.

Proposed Funding Portal Rule 300(c) requires funding portal members to report to FINRA (and the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events. The rule is largely based on current FINRA Rule 4530 (Reporting Requirements). Funding portal members would use the Funding Portal Rule 300(c) Form for their reporting requirements pursuant to the rule.¹⁶

Based in large part on current NASD Rule 1160 (Contact Information Requirements), proposed Funding Portal Rule 300(d) requires funding portal members to report to FINRA all contact information required by FINRA through such means as FINRA may specify and to promptly update their required contact information.

Investigations and Sanctions (Funding Portal Rule 800)

Under proposed Funding Portal Rule 800(a), funding portal members will be subject to the FINRA Rule 8000 Series (Investigations and Sanctions), unless the context requires otherwise. Paragraph (b) of the proposed rule includes a streamlined version of FINRA Rule 8312 (FINRA BrokerCheck Disclosure). The rule provides that FINRA shall make available to the public information filed by a funding portal member that is currently or was previously registered with FINRA, and that, except as otherwise provided by the rule, FINRA shall make available any information reported on the funding portal's most recently filed SEC registration forms. Further, under the rule, FINRA shall make available information filed by a funding portal member indicating whether the funding portal member or any associated person of the funding portal member is subject to a statutory disqualification.

Code of Procedure (Funding Portal Rule 900)

Under proposed Funding Portal Rule 900(a), funding portal members will be subject to the FINRA Rule 9000 Series (Code of Procedure), unless the context requires otherwise. Paragraph (b) of the proposed rule includes a streamlined version of the current FINRA Rule 9520 Series (Eligibility Proceedings) and sets forth the procedures for a person to become or remain associated with a funding portal member notwithstanding the existence of a statutory disqualification, and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws or Funding Portal Rules.

Arbitration and Mediation (Funding Portal Rule 1200)

Under proposed Funding Portal Rule 1200(a), funding portal members will be subject to the FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure), unless the context requires otherwise. Paragraph (b) of the proposed rule addresses the use by funding portal members of predispute arbitration agreements for investor accounts. The rule is a streamlined version of current FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Agreements).

Request for Comment

FINRA requests comment on all aspects of the proposed rules and related forms, including any potential costs and burdens that the proposal could impose on funding portals. FINRA particularly requests comment concerning the following issues:

- ▶ Do the proposed rules appropriately accommodate the scope of funding portal business as provided by the JOBS Act? If not, what other accommodations are appropriate and why?
- ▶ Do the proposed rules provide sufficient protections to investors who might use funding portals? If not, what additional protections are warranted and why?
- ▶ Is there any segment of the funding portal industry for which the rules will be more burdensome? Are these additional burdens justified by the business engaged in by these funding portals?
- ▶ The proposed rules do not impose licensing requirements on associated persons of funding portal members, as they do not appear necessary in light of the limited activities of funding portals. Should there be licensing requirements for associated persons of funding portals? Why or why not?
- ▶ What costs will be associated with the fidelity bond coverage required by proposed Funding Portal Rule 110(b)? Are there financial responsibility or net capital requirements that FINRA should adopt in addition to or in lieu of a fidelity bond requirement? Why or why not?
- ▶ As discussed earlier, proposed Funding Portal Rule 300(a) requires funding portal members to establish and maintain supervisory systems. Are there specific supervisory requirements that FINRA should adopt? Why or why not? What potential costs do prospective funding portal members expect in developing and implementing supervisory systems? Similarly, what costs do prospective funding portal members expect would be imposed by compliance with the proposed requirements to:
 - ▶ develop and implement a written anti-money laundering program as specified under proposed Funding Portal Rule 300(b); and
 - ▶ promptly report to FINRA the regulatory proceedings, disciplinary and other events as set forth under proposed Funding Portal Rule 300(c)?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Endnotes

1. The term “funding portal” is defined under Section 3(a)(80) of the Securities Exchange Act of 1934 (SEA), as revised by the JOBS Act. See Pub. L. No. 112-106, 126 Stat. 306 (2012). The SEC has separately proposed rules to implement the provisions of the JOBS Act governing funding portals. Exchange Act Release No. 70741 (October 23, 2013).
2. See Title III of the JOBS Act.
3. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See [NTM 03-73](#) (November 2003) (NASD Announces Online Availability of Comments) for more information.
4. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
5. Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.
6. See Section 4(a)(6) of the Securities Act of 1933, as amended by the JOBS Act.
7. The SEC’s proposed Rule 400(a) under Regulation Crowdfunding requires in part that a funding portal must register with the Commission and become a member of FINRA or any other applicable national securities association registered under SEA Section 15A. FINRA is the only registered national securities association.
8. See Exchange Act Release No. 68633 (January 11, 2013), 78 FR 4186 (January 18, 2013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2013-005).
9. The text of the proposed rules is set forth in [Attachment A](#).
10. See [Attachment B](#).
11. See [Attachment C](#).
12. See [Attachment D](#). Funding portals are required to keep statutory disqualification information current and to update the information promptly, but in any event not later than 10 days following any change in such information. Proposed Funding Portal Rule 110(a)(3)(B) sets forth this update requirement as to funding portal *applicants*; proposed Funding Portal Rule 800(b)(2) sets forth the requirement as to intermediaries once they become funding portal *members*.
13. FINRA will separately address the specific membership application and other fees that apply to funding portals.
14. FINRA notes that current FINRA Rule 2020 does not expressly include the term “aiding and abetting.”
15. See Exchange Act Release No. 70741 (October 23, 2013).
16. See [Attachment E](#).

Attachment A

Below is the text of proposed Funding Portal Rules.

Funding Portal Rules

Table of Contents

100. General Standards

- (a) Application of the By-Laws and the Funding Portal Rules**
- (b) Definitions**

110. Funding Portal Application

- (a) Application Process**
- (b) Fidelity Bond**

200. Funding Portal Conduct

- (a) Standards of Commercial Honor and Principles of Trade**
- (b) Use of Manipulative, Deceptive or Other Fraudulent Devices**
- (c) Communications with the Public**

300. Funding Portal Compliance

- (a) Supervisory System**
- (b) Anti-Money Laundering Compliance Program**
- (c) Reporting Requirements**
- (d) Contact Information Requirements**

800. Investigations and Sanctions

- (a) Application of FINRA Rule 8000 Series (Investigations and Sanctions) to**

Funding Portals

- (b) Public Disclosure of Information on Funding Portals**

900. Code of Procedure

(a) Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals

(b) Eligibility Proceedings

1200. Arbitration and Mediation

(a) Application of FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure) to Funding Portals

(b) Predispute Arbitration Agreements for Investor Accounts

100. General Standards

(a) Application of the By-Laws and the Funding Portal Rules

All funding portal members and persons associated with funding portal members shall be subject to the FINRA By-Laws, unless the context requires otherwise, and the Funding Portal Rules. Persons associated with a funding portal member shall have the same duties and obligations as a funding portal member under the Funding Portal Rules. For purposes of Section 1(a) of Article III of the FINRA By-Laws, a registered broker or dealer shall include a registered funding portal.

The terms used in the Funding Portal Rules, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws, unless a term is defined differently in a Funding Portal Rule, or unless the context of the term within a Funding Portal Rule requires a different meaning.

(b) Definitions

When used in the Funding Portal Rules, unless the context otherwise requires:

(1) “Associated person of a funding portal member” or “person associated with a funding portal member”

The term “associated person of a funding portal member” or “person associated with a funding portal member” means 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.

(2) “By-Laws”

The term “By-Laws” means the By-Laws of the Corporation or the FINRA By-Laws.

(3) “Exchange Act” or “SEA”

The term “Exchange Act” or “SEA” means the Securities Exchange Act of 1934, as amended.

(4) “FINRA”

The term “FINRA” means, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.

(5) “Funding Portal”

The term “funding portal” shall be as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

(6) “Funding Portal Member”

The term “funding portal member” means any funding portal admitted to membership in FINRA.

(7) “Funding Portal Rules”

The term “Funding Portal Rules” means Funding Portal Rules 100 through 1200.

(8) “Investor”

The term “investor” does not include a broker, dealer or funding portal.

(9) “Person”

The term “person” includes any natural person, partnership, corporation, association, or other legal entity (provided, however, that for purposes of paragraph (b)(1) of this Rule the term “person” shall solely include a natural person).

(10) “SEC”

The term “SEC” means the Securities and Exchange Commission.

(11) “Securities Act”

The term “Securities Act” means the Securities Act of 1933, as amended.

110. Funding Portal Application

(a) Member Application Process

(1) Definitions

(A) “Associated Person”

Solely for purposes of paragraph (a) of this Rule, the term “associated person” means 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.

(B) “FP Applicant”

The term “FP Applicant” means a person that applies for admission to FINRA as a funding portal member under paragraph (a)(3) of this Rule or a funding portal member that files an application for approval of a change in ownership or control under paragraph (a)(4) of this Rule.

(C) “Day”

The term “day” means calendar day. In calculating a period of time, the day of the act (e.g., filing of application, service of notice) from which the period of time designated begins to run shall not be included.

(D) “Department”

The term “Department” means the Department of Member Regulation of FINRA.

(E) “District”

The term “district” means a district established by the FINRA Regulation Board.

(2) Service or Filing Date

(A) FINRA shall serve a notice or decision issued under paragraph (a) of this Rule by electronic delivery.

(B) For purposes of paragraph (a) of this Rule, service by FINRA or filing by an FP Applicant shall be deemed complete on the date recorded by FINRA's electronic systems for electronic communications or by other means of verification prescribed by FINRA.

(3) Application to be a Funding Portal Member

(A) An FP Applicant for FINRA membership shall submit its application to the Department by filing a Form FP-NMA in the manner prescribed by FINRA and an application fee.

(B) At the time an FP Applicant for FINRA membership submits its application pursuant to paragraph (a)(3)(A) of this Rule, the FP Applicant must submit information, in a format to be prescribed by FINRA, indicating whether the FP Applicant or any associated person of the FP Applicant is subject to an event described in Section 3(a)(39) of the Exchange Act. The FP Applicant must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

(4) Application for Approval of a Change in Ownership or Control

(A) A funding portal member shall file an application for approval of any change:

(i) in the equity ownership or partnership capital, LLC membership interest, or other ownership interest of the funding portal member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, LLC membership interest, or other ownership interest; or

(ii) of control persons of the funding portal member, other than the appointment or election of a natural person as an officer or director of the funding portal member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the funding portal member.

(B) A funding portal member shall submit its application for approval of any of the changes described in paragraph (a)(4)(A) of this Rule to the Department by filing a Form FP-CMA in the manner prescribed by FINRA and an application fee.

(5) Rejection of Application That Is Not Complete

If the Department determines within 14 days after the filing of an application pursuant to paragraphs (a)(3) or (a)(4) of this Rule that the application is not complete, the Department shall reject the application and deem it not to have been filed. In such case, within the 14 day period, the Department shall serve a written notice on the FP Applicant of the Department's determination and

the reasons therefor. FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. If the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant shall submit a new application and fee under Funding Portal Rule 110(a).

(6) Request For Additional Documents Or Information

Within 14 days after the filing of an application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application, and the FP Applicant shall file any additional information and documents with the Department within 14 days after service of the Department's initial request. The Department may serve subsequent requests for additional information or documents at any time during the membership application process. Unless otherwise agreed by the Department and the FP Applicant, the FP Applicant shall file any additional information and documents with the Department within seven days after service of any subsequent request.

(7) Withdrawal of Application

If an FP Applicant withdraws an application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule within 14 days after filing the application, FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. If the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant shall submit a new application and fee pursuant to paragraphs (a)(3) or (a)(4) of this Rule.

(8) Membership Interview**(A) Requirement for an Interview**

Before the Department serves its decision on an application for new membership in FINRA, the Department shall conduct one or more membership interviews with a representative or representatives of the FP Applicant. The membership interview(s) may be conducted by video conference or such other means as FINRA may specify.

(B) Service of Notice

At least five days before a membership interview, the Department shall serve on the FP Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the FP Applicant who are required to participate in the interview. The Department shall serve the notice in a manner consistent with paragraph (a)(2) of this Rule. The FP Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.

(C) Time

Unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 30 days after the filing of an application or within 14 days after the filing of all additional information or documents requested, whichever is later.

(9) Standards for Granting or Denying Application

After considering an application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule, other information and documents provided by the FP Applicant during the application process, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the FP Applicant meets each of the following standards, as applicable:

(A) The FP Applicant and its associated persons are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration all information in its possession, including information regarding whether an FP Applicant or its associated persons:

(i) is subject to an event described in Section 3(a)(39) of the Exchange Act; and

(ii) is the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a

guilty or no contest plea of an FP Applicant or its associated persons.

(B) The FP Applicant has established all contractual or other arrangements and business relationships with banks, broker-dealers, clearing corporations, service bureaus, escrow agents, transfer agents, technology service providers, or others necessary to initiate the operations described in the FP Applicant's Form FP-NMA.

(C) The FP Applicant has a supervisory system that is reasonably designed to achieve compliance with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules.

(D) The FP Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.

(E) The FP Applicant has a recordkeeping system that enables the FP Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements.

(10) Granting or Denying Application

(A) If the Department determines that the FP Applicant meets each of the applicable standards in paragraph (a)(9) of this Rule, the Department shall grant the application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule. The FP Applicant's approval for membership shall be contingent upon the FP Applicant's filing of an executed written membership agreement.

(B) If the Department determines that the FP Applicant does not meet one or more of the applicable standards in paragraph (a)(9) of this Rule, the Department shall deny the application.

(11) Decision

The Department shall serve a written decision on the application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule within 60 days after the filing of the application. If the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a)(9) of this Rule. The Department shall serve its decision and the membership agreement on the FP Applicant in accordance with paragraph (a)(2) of this Rule. The decision shall become effective upon service.

(12) Appeal of Department's Decision

(A) Request for Review; Final Action

(i) Within 14 days after service of a decision under paragraph (a)(11) of this Rule, an FP Applicant may file a written request for review with the National Adjudicatory Council's Review Subcommittee. A request for review shall state with specificity why the FP Applicant believes that the Department's decision is inconsistent with the applicable standards set forth in paragraph (a)(9) of this Rule or otherwise should be set aside. An FP Applicant may withdraw its notice of appeal at any time by

filing a written notice of withdrawal of appeal with the Review Subcommittee.

(ii) If the FP Applicant does not file a request for a review or withdraws its notice of appeal, the Department's decision shall constitute final action by FINRA.

(B) Decision

(i) Within 14 days after the filing of a request for review, the Department shall transmit to the Review Subcommittee and serve on the FP Applicant copies of all documents that were considered in connection with the Department's decision and an index to the documents. After considering the issues presented in the review and the transmitted documents, the Review Subcommittee shall prepare a written decision affirming, modifying or denying the Department's decision and setting forth its findings and conclusions. The Review Subcommittee shall provide a copy of its decision to the Board. Alternatively, the Review Subcommittee may remand the membership proceeding with instructions. If the Board does not call the decision for review under paragraph (a)(12)(B)(ii) of this Rule, the Review Subcommittee shall issue the written decision after the expiration of the Board call for review period, and the decision shall constitute final FINRA action.

(ii) A Governor may call a membership proceeding for review by the Board at the next meeting of the Board that is at least 14 days after the date on which the Board received the decision. If a call for review is made, the Board shall review the membership proceeding not later than the next meeting of the Board. The Board shall issue a written decision affirming, modifying or denying the Review Subcommittee's decision and setting forth its findings and conclusions. Alternatively, the Board may remand the membership proceeding with instructions. The decision shall constitute final FINRA action, unless the Board remands the membership proceeding.

(13) Application to SEC for Review

A person aggrieved by final action of FINRA under paragraph (a) of this Rule may apply for review by the SEC pursuant to Section 19(d)(2) of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the SEC otherwise orders.

(14) Filing of Misleading Information as to Membership or Registration

No funding portal member or person associated with a funding portal member shall file with FINRA information with respect to membership or registration that is incomplete or inaccurate so as to be misleading, or that could in any way tend to mislead, or shall fail to correct such filing after notice thereof.

(b) Fidelity Bond

(1) General Provision

(A) Each funding portal member shall maintain blanket fidelity bond coverage that provides against loss and has Insuring Agreements covering at least the following:

- (i) Fidelity
- (ii) On Premises
- (iii) In Transit
- (iv) Forgery and Alteration

(B) The fidelity bond must include a cancellation rider providing that the insurance carrier will use its best efforts to promptly notify FINRA in the event the bond is cancelled, terminated or substantially modified.

(C) A funding portal member's fidelity bond must provide for per loss coverage without an aggregate limit of liability.

(2) Minimum Required Coverage

(A) A funding portal member must maintain minimum fidelity bond coverage of \$100,000 for all Insuring Agreements required by paragraph (b)(1) of this Rule.

(B) At a minimum, a funding portal member must maintain fidelity bond coverage for any person associated with the funding portal member, except directors or trustees who are not performing acts within the scope of the usual duties of an officer or employee.

(C) Any defense costs for covered losses must be in addition to the minimum coverage requirements as set forth in paragraph (b)(2)(A) of this Rule.

(3) Deductible Provision

A provision may be included in a fidelity bond to provide for a deductible of up to 10% of the coverage purchased by a funding portal member.

(4) Notification of Change

A funding portal member shall immediately advise FINRA in writing if its fidelity bond is cancelled or terminated, or substantially modified so that it no longer complies with the requirements of this Rule.

200. Funding Portal Conduct

(a) Standards of Commercial Honor and Principles of Trade

A funding portal member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

(b) Use of Manipulative, Deceptive or Other Fraudulent Devices

No funding portal member shall effect any transaction in, or induce the purchase or sale of, any security by means of, or by aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance.

(c) Communications with the Public

(1) Definition of “Funding Portal Communication”

For purposes of this Rule, the term “funding portal communication” means any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.

(2) Content Standards

(A) No funding portal communication may:

- (i) include any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- (ii) omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;
- (iii) state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the funding portal member's business practices; or
- (iv) predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.

(B) All funding portal member communications must 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 or type of security, industry, or service.

(C) All funding portal member communications must prominently disclose the name of the funding portal member, or the name under which

the funding portal member primarily conducts business as disclosed on the member's Form FP-NMA.

(3) Issuer Communications

The content standards of paragraphs (c)(2)(A) and (B) of this Rule shall not apply to any communication on the funding portal member's website that is prepared solely by an issuer; provided, however, that no funding portal member may include on its website any issuer communication that the funding portal member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

300. Funding Portal Compliance

(a) Supervisory System

(1) Each funding portal member shall establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Funding Portal Rules. A funding portal member's supervisory system shall provide, at a minimum, for the following:

(A) the establishment and maintenance of written procedures to supervise the activities of the funding portal and its associated persons;

(B) the designation of a person with authority to carry out the supervisory responsibilities of the funding portal member; and

(C) reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

(2) A funding portal member shall permit the examination and inspection of its premises, systems, platforms, and records by representatives of FINRA and the Commission, and shall cooperate with the examination, inspection, or investigation of any persons directly or indirectly using its platform.

(b) Anti-Money Laundering Compliance Program

(1) Program

Each funding portal member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the funding portal member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each funding portal member's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum:

(A) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(B) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(C) provide for independent testing for compliance to be conducted every two years (on a calendar-year basis) or more frequently if

circumstances warrant by personnel of the funding portal member or by a qualified outside party;

(D) designate and identify to FINRA (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program (such individual or individuals must be an associated person of the funding portal member) and, pursuant to Funding Portal Rule 300(d), provide prompt notification to FINRA regarding any change in such designation(s); and

(E) provide ongoing training for appropriate personnel.

(2) Independent Testing Requirements

(A) Independent testing, pursuant to paragraph (b)(1)(C) of this Rule, must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations.

(B) Independent testing may not be conducted by:

- (i) a person who performs the functions being tested,
- (ii) the designated anti-money laundering compliance person, or
- (iii) a person who reports to a person described in either paragraphs (b)(2)(B)(i) or (ii) of this Rule.

(c) Reporting Requirements

(1) Each funding portal member shall promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the member knows or should have known of the existence of any of the following:

(A) the funding portal member or an associated person of the funding portal member:

(i) is named as a defendant or respondent in any regulatory proceeding, whether foreign or domestic, involving an alleged violation of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations, standards of conduct or by-laws, or has been found by a regulatory body or self-regulatory organization, whether foreign or domestic, to have violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct;

(ii) is the subject of any written complaint involving allegations of fraudulent conduct or misuse or misappropriation of funds or assets;

(iii) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities-, insurance-, commodities-, financial- or investment-related regulatory body or self-regulatory organization, whether foreign or domestic, or is denied membership or continued membership in any such self-regulatory organization; or is barred

from becoming associated with any member of any such self-regulatory organization;

(iv) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false 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, or substantially equivalent activity in a domestic, military or foreign court;

(v) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, funding portal, underwriter or insurance company that was suspended, expelled or had its registration denied or revoked by any regulatory body, jurisdiction or organization, whether foreign or domestic, or is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to, any felony or misdemeanor in a foreign or domestic court;

(vi) is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or

arbitration, or is the subject of any claim for damages by an investor, broker, dealer or funding portal member that relates to the provision of financial services or relates to a financial transaction, and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the funding portal member is the defendant or respondent or is the subject of any claim for damages by an investor, broker, dealer or funding portal member, then the reporting to FINRA shall be required only when such judgment, award or settlement is for an amount exceeding \$25,000;

(vii) is, or is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification; or

(B) an associated person of the funding portal member is the subject of any disciplinary action taken by the funding portal member involving suspension, termination, the withholding of compensation or of any other remuneration in excess of \$2,500, the imposition of fines in excess of \$2,500 or is otherwise disciplined in any manner that would

have a significant limitation on the individual's activities on a temporary or permanent basis.

(2) Each funding portal member shall promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the funding portal member has concluded or reasonably should have concluded that an associated person of the funding portal member or the funding portal member itself has violated any securities-, commodities-, financial-or investment-related laws, rules, regulations or standards of conduct of any foreign or domestic regulatory body or self-regulatory organization.

(3) Each person associated with a funding portal member shall promptly report to the funding portal member the existence of any of the events set forth in paragraph (c)(1)(A) of this Rule.

(4) Nothing contained in this Rule shall eliminate, reduce or otherwise abrogate the responsibilities of a funding portal member to promptly disclose required information on Form Funding Portal as applicable, to make any other required filings or to respond to FINRA with respect to any investor complaint, examination or inquiry. In addition, a member need not report an event otherwise required to be reported under paragraph (c)(1)(A) of this Rule if the member discloses the event on the Form Funding Portal or FP-SD Schedule, consistent with the requirements of those forms.

(5) For purposes of this Rule, Supplementary Material .01 through .07, .09 and .10 of FINRA Rule 4530 (the "Supplementary Material") shall apply, provided, however, that, as the context requires:

(A) the term “member” as used in the Supplementary Material shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(B) the term “associated person” as used in the Supplementary Material shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(C) Supplementary Material .01 shall apply to paragraphs (c)(1)(B) and (c)(2) of this Rule;

(D) Supplementary Material .02 and .03 shall apply to paragraphs (c)(1)(A)(i) and (c)(2) of this Rule;

(E) Supplementary Material .05 and .07 shall apply to paragraphs (c)(1) and (c)(2) of this Rule;

(F) Supplementary Material .06 shall apply to paragraph (c)(1)(A)(vi) of this Rule; and

(G) Supplementary Material .10 shall apply to paragraphs (c)(1)(A)(i) and (c)(1)(A)(iii) of this Rule.

(d) Contact Information Requirements

(1) Each funding portal member shall report to FINRA all contact information required by FINRA through such means as FINRA may specify.

(2) Each funding portal member shall promptly update its required contact information (including its executive representative designation and contact information as required by Article IV, Section 3 of the FINRA By-Laws),

but in any event not later than 30 days following any change in such information.

In addition, each member shall review and, if necessary, update its required contact information, through such means as FINRA may specify, within 17 business days after the end of each calendar year.

(3) Each funding portal member shall comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

800. Investigations and Sanctions

(a) Application of FINRA Rule 8000 Series (Investigations and Sanctions) to Funding Portals

Except for FINRA Rules 8110, 8211, 8213 and 8312, all funding portal members shall be subject to the FINRA Rule 8000 Series, unless the context requires otherwise, provided, however, that:

(1) the term “member” as used in the FINRA Rule 8000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(2) the term “associated person” as used in the FINRA Rule 8000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 8000 Series shall include the Funding Portal Rules;

(4) for purposes of FINRA Rule 8210(d):

(A) a notice under FINRA Rule 8210 shall be deemed received by the funding portal member to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the Form Funding Portal. With respect to a person who is currently associated with a funding portal member, a notice under FINRA Rule 8210 shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the Form Funding Portal. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a funding portal member, a notice under FINRA Rule 8210 shall be deemed received by the person upon personal service, as set forth in FINRA Rule 9134(a)(1). If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person currently associated with the funding portal member has actual knowledge that the funding portal member's address in the Form Funding Portal is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(i) the last known business address of the funding portal member as reflected in the Form Funding Portal; and

(ii) any other more current address of the funding portal member or the person currently associated with the funding portal

member known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice; and

(B) if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person knows that the funding portal member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the funding portal member or person, and any notice served upon counsel shall be deemed received by the funding portal member or person.

(b) Public Disclosure of Information on Funding Portals

(1) FINRA shall make available to the public information filed by a funding portal member that is currently or was previously registered with FINRA. Except as otherwise provided in paragraph (b)(3) of this Rule, FINRA shall make available any information reported on the most recently filed Form Funding Portal.

(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 Exchange Act. The funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

(3) FINRA shall not make available:

(A) information reported as a Social Security number or residential address, information that FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by FINRA. FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(B) information reported on Form Funding Portal relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(C) the most recent information reported on Form Funding Portal, if FINRA determines that:

(i) the information was reported in error by a funding portal member;

(ii) the information, through amendments to Form Funding Portal, is no longer relevant to registration.

900. Code of Procedure

(a) Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals

Except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule

9700 Series, all funding portal members shall be subject to the FINRA Rule 9000 Series, unless the context requires otherwise, provided, however, that:

(1) the term “member” as used in the FINRA Rule 9000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(2) the term “associated person” as used in the FINRA Rule 9000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 9000 Series shall include the Funding Portal Rules;

(4) for purposes of FINRA Rule 9217, a funding portal member may be subject to a fine under FINRA Rule 9216(b) with respect to any of the following:

(A) failure to timely submit amendments to Form Funding Portal;

(B) Funding Portal Rule 200(c) (Communications with the Public);

(C) Funding Portal Rule 300(a) – Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217;

(D) Funding Portal Rule 300(c) – failure to timely file reports;

(E) failure to provide or update contact information as required by Funding Portal Rule 300(d);

(F) Rule 303(f) of SEC Regulation Crowdfunding – Confirmation of Transactions; and

(G) Rule 404 of SEC Regulation Crowdfunding – failure to make and preserve records in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Funding Portal Rules;

(5) for purposes of FINRA Rules 9134(b)(1) and 9134(b)(2), the residential or business address, as applicable, as reflected in Form Funding Portal, in lieu of the Central Registration Depository, shall be acceptable;

(6) for purposes of FINRA Rule 9134(b)(2), service on a contact employee as set forth in Form Funding Portal, in lieu of Form BD, shall be acceptable;

(7) for purposes of FINRA Rule 9551(a), FINRA staff may issue a written notice requiring a funding portal member to file communications with the FINRA Advertising Regulation Department at least ten days prior to use if FINRA staff determines that the member has departed from the standards of Funding Portal Rule 200(c).

(8) for purposes of FINRA Rule 9551(d), the pre-use filing requirement referenced in a notice issued and served under FINRA Rule 9551 shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to FINRA Rule 9559;

(9) for purposes of proceedings pursuant to FINRA Rule 9810(a), proceedings may be initiated with respect to alleged violations of Section 10(b) of the Exchange Act and SEA Rule 10b-5, Funding Portal Rule 200(a) (if the alleged

violation is misuse of investor funds or assets, or based on violations of Section 17(a) of the Securities Act) and Funding Portal Rule 200(b).

(b) Eligibility Proceedings

(1) Purpose

Funding Portal Rule 900(b) sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules. Such actions hereinafter are referred to as “eligibility proceedings.”

(2) Definitions

(A) The term “Application” means FINRA’s Form MC-400 for individuals or Form MC-400A for funding portal members, filed with the Department of Registration and Disclosure (“RAD”).

(B) The term “disqualified funding portal member” means a funding portal member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the FINRA By-Laws.

(C) The term “disqualified person” means an associated person of a funding portal member or person seeking to become an associated person of a funding portal member who is or becomes subject to a

disqualification or is otherwise ineligible for association under Article III, Section 3 of the FINRA By-Laws.

(D) The term “sponsoring funding portal member” means the funding portal member or applicant for membership pursuant to Funding Portal Rule 110(a) that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

(3) Initiation of Eligibility Proceeding; Member Regulation

Consideration

(A) Initiation by FINRA

(i) Issuance of Notice of Disqualification or Ineligibility

If FINRA staff has reason to believe that a disqualification exists or that a funding portal member or person associated with a funding portal member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a). The notice shall specify the grounds for such disqualification or ineligibility.

FINRA staff shall not issue such written notice to funding portal members or applicants for funding portal membership when no Application is required pursuant to Funding Portal Rule 900(b)(7).

(ii) Notice Regarding a Funding Portal Member

A notice issued to a disqualified funding portal member shall state that the disqualified funding portal member may apply for relief by filing an Application or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. If the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the membership of the funding portal member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

(iii) Notice Regarding an Associated Person

A notice issued regarding a disqualified person to a funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) shall state that such funding portal member or applicant for funding portal membership may file an Application on behalf of itself and such person or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. If the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the funding portal member may not associate or continue to associate with the disqualified person, unless the

Department of Member Regulation grants an extension for good cause shown.

(iv) Service

A notice issued under this paragraph (b)(3)(A) shall be served by facsimile or electronic mail, or pursuant to FINRA Rules 9131 and 9134, as adopted pursuant to Funding Portal Rule 900(a).

(4) Obligation of Funding Portal Member to Initiate Eligibility

Proceeding

(A) A funding portal member shall file an Application or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, with RAD, if the funding portal member determines prior to receiving a notice under paragraph (b)(3)(A) of this Rule that:

(i) It has become a disqualified funding portal member;

(ii) A person associated with such funding portal member or whose association is proposed by an applicant for funding portal membership under Funding Portal Rule 110(a) has become a disqualified person; or

(iii) The funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) wishes to sponsor the association of a person who is a disqualified person.

(5) Withdrawal of Application or Written Request for Relief

A funding portal member may withdraw its Application or, as set forth in Funding Portal Rule 900(b)(8)(A) its written request for relief, at any time prior to

an appeal by filing a written notice with the Department of Member Regulation and RAD pursuant to FINRA Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a). A funding portal member may withdraw its Application after the start of an appeal but prior to the issuance of a decision by the National Adjudicatory Council by filing a written notice with the Department of Member Regulation and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a).

(6) Ex Parte Communications

The prohibitions against ex parte communications set forth in FINRA Rule 9143, as adopted pursuant to Funding Portal Rule 900(a), shall become effective under Funding Portal Rule 900(b) when FINRA staff has initiated the eligibility proceeding and FINRA staff has knowledge that a funding portal member intends to file an Application or written request for relief pursuant to Funding Portal Rule 900(b).

(7) Relief from Eligibility Proceedings

A funding portal member is not required to file an Application if:

(A) The disqualification arises solely from findings in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, CFTC or a self-regulatory organization, and the sanction is no longer in effect.

(B) The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(i), and the bar is no longer in effect, provided that there is no final order specified in Exchange Act Section 15(b)(4)(H)(ii), in which case paragraph (b)(7)(C) of this Rule applies.

(C) The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(ii), and:

(i) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect; or

(ii) the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered 10 or more years ago.

(D) The disqualification arises solely under Exchange Act Section 3(a)(39)(E), and the disqualified funding portal member or person is subject to the disqualification solely because the member or person has associated with it any person who is known, or in the exercise of reasonable care should be known, to the disqualified member or person to be a person described by subparagraph (A), (B), (C), or (D) of Exchange Act Section 3(a)(39), unless the associated person controls such disqualified member or person, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member.

(8) Matters That May Be Approved After the Filing of an Application or Written Request for Relief

(A) The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to

approve a written request for relief from the eligibility requirements by a disqualified funding portal member or a sponsoring funding portal member without the filing of an Application by such disqualified funding portal member or sponsoring funding portal member if a disqualified funding portal member or disqualified person is subject to one or more of the following conditions, but is not otherwise subject to disqualification:

(i) an injunction as described in Section 15(b)(4)(B) of the Exchange Act that was entered ten or more years prior to the proposed admission or continuance; or

(ii) a request to change the supervisor of a disqualified person.

(B) The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve, upon the filing of an Application by a disqualified funding portal member or a sponsoring funding portal member and written consent to a heightened supervisory plan, all Applications seeking relief from disqualifications arising under Section 3(a)(39) of the Exchange Act.

(i) By the submission of a written consent to a heightened supervisory plan, the disqualified funding portal member, sponsoring funding portal member and disqualified person waive:

a. the right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge

the validity of the supervisory plan, if the supervisory plan is accepted;

b. any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim bias or prejudice by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's approval or the supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan; and

c. any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, as adopted pursuant to Funding Portal Rule 900(a), in connection with such person's or body's participation in discussions regarding the terms and conditions of the approval or supervisory plan, or other consideration of the approval or

supervisory plan, including acceptance or rejection of such approval or supervisory plan.

(ii) If the heightened supervisory plan is rejected, the disqualified funding portal member, sponsoring funding portal member, or disqualified person shall be bound by the waivers made under paragraph (b)(8)(B)(i) of this Rule for conduct by persons or bodies occurring during the period beginning on the date the heightened supervisory plan was submitted and ending upon the rejection of the heightened supervisory plan and shall have the right to appeal such decision pursuant to Funding Portal Rule 900(b)(11).

(9) Member Regulation Consideration of Applications for New Funding Portal Members

In all instances where FINRA receives a Form MC-400 or Form MC-400A under this Rule, and such Application is submitted on behalf of an applicant for membership as a funding portal member under Funding Portal Rule 110(a), the Department of Member Regulation shall defer a decision on such Form MC-400 or Form MC-400A until such time as FINRA has issued a determination on the application submitted pursuant to Funding Portal Rule 110(a).

**(10) Rights of Disqualified Funding Portal Member, Sponsoring
Funding Portal Member, Disqualified Person, and Department of Member
Regulation**

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to Funding Portal Rule 900(b)(8)(A), the disqualified funding portal member or sponsoring funding portal member may file an Application under Funding Portal Rule 900(b)(8)(B). The Department of Member Regulation may require a disqualified funding portal member or sponsoring funding portal member to file an Application with RAD, notwithstanding the provisions of Funding Portal Rule 900(b)(8)(A).

(B) In the event the Department of Member Regulation does not approve an Application pursuant to Funding Portal Rule 900(b)(8)(B), the disqualified funding portal member or sponsoring funding portal member shall have the right to appeal such decision pursuant to Funding Portal Rule 900(b)(11). If not timely appealed pursuant to Funding Portal Rule 900(b)(11), the decision issued by Member Regulation shall constitute final action of FINRA and shall become effective immediately.

**(11) Appeal of Member Regulation's Decision to Deny an Application
or a Written Request for Relief**

(A) Notice

A funding portal member or sponsoring funding portal member may file a written notice of appeal within 25 calendar days after service of

a decision issued under Funding Portal Rule 900(b). The notice of appeal shall be filed with the Office of General Counsel, with a copy to the Department of Member Regulation. The notice of appeal shall state with specificity why the appellant believes the Department of Member Regulation's decision is not in the best interest of the investing public or should otherwise be set aside. The notice of appeal shall be signed by the appellant. Upon notice, and acknowledgment of acceptance of the appeal from the National Adjudicatory Council, the Department of Member Regulation shall be afforded time and opportunity to respond to such appeal.

(B) Stay of Decision

An appeal of Member Regulation's decision to deny an Application or a written request for relief shall operate as a stay of that decision while the appeal is pending.

(C) After an appellant files a timely appeal, the National Adjudicatory Council or the Statutory Disqualification Committee shall appoint two or more members, who shall be current or former members of the National Adjudicatory Council, Statutory Disqualification Committee, or former Directors or Governors, to form a subcommittee. The subcommittee shall review the appeal and recommend a decision to the Statutory Disqualification Committee.

(D) Expedited Review

Where the failure to promptly review a decision to deny an Application would unduly or unfairly harm the funding portal member or sponsoring funding portal member, the Statutory Disqualification Committee shall provide expedited review upon a showing of good cause.

(E) Withdrawal of Appeal

A funding portal member or sponsoring funding portal member may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the Statutory Disqualification Committee.

(F) Authority of the Subcommittee

The subcommittee shall have the authority to order the appellant and Member Regulation to file legal briefs, participate in oral argument, or supplement the record with any additional information. The subcommittee may, upon a showing of good cause, consider new evidence submitted by the appellant or Member Regulation.

(G) Decision

After considering all matters on appeal, and, as applicable, the subcommittee's recommendation, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council. After considering all the matters presented in the request for relief, the Statutory Disqualification Committee's recommendation, the public interest and the protection of investors, the National Adjudicatory Council may affirm, modify, or

reverse in writing Member Regulation's decision. The National Adjudicatory Council shall provide its proposed decision to the FINRA Board. If the FINRA Board does not call the decision for review, the decision shall be served pursuant to Funding Portal Rule 900(b)(3)(A)(iv) and shall constitute final action of FINRA. A decision to affirm Member Regulation's decision shall be effective immediately. A decision to approve the Application shall be effective after the SEC issues an order or acknowledgement letter, as the case may be.

(12) Discretionary Review by the FINRA Board

(A) Call for Review by the FINRA Board

A Governor may call a proposed National Adjudicatory Council decision regarding an eligibility proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b)(12)(B) of this Rule.

(B) 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the FINRA Board that is at least 15 days after the date on which the FINRA Board receives the proposed written decision of the National Adjudicatory Council. By a unanimous vote of the FINRA Board, the FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the FINRA Board then in office, the FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

(C) Review at Next Meeting

If a Governor calls an eligibility proceeding for review within the period prescribed in paragraph (b)(12)(B) of this Rule, the FINRA Board shall review the eligibility proceeding not later than the next meeting of the FINRA Board. The FINRA Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(D) Decision of FINRA Board, Including Remand

After review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the FINRA Board may remand the eligibility proceeding with instructions.

(E) Issuance of Decision

The FINRA Board shall issue and serve its written decision on the disqualified funding portal member, sponsoring funding portal member, or disqualified person, and the Department of Member Regulation pursuant to FINRA Rules 9132 and 9134, as adopted pursuant to Funding Portal Rule 900(a). The decision shall constitute the final action of FINRA, unless the FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC-ordered sanctions, an order.

(13) Application to SEC for Review

The right to have any action taken pursuant to this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of final action by FINRA, unless the SEC otherwise orders.

1200. Arbitration and Mediation

(a) Application of FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure) to Funding Portals

All funding portal members shall be subject to the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series, unless the context requires otherwise, provided, however, that:

(1) the term “member” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(2) the term “associated person” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include the Funding Portal Rules; and

(4) the term “customer” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include investors as such term is used throughout the Funding Portal Rules.

(b) Predispute Arbitration Agreements for Investor Accounts

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form:

“This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party’s ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.”

(2) (A) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) Within 30 days of signing, a copy of the agreement containing any such clause shall be given to the investor and the funding portal member shall retain proof of delivery or of the investor’s acknowledgement of receipt.

(3) (A) Within ten business days of receipt of the investor’s request, a funding portal member shall provide an investor with a copy of any predispute arbitration clause or investor agreement executed between the investor and the funding portal member.

(B) Upon request by an investor, a funding portal member shall provide the investor with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) No predispute arbitration agreement shall include any condition that:

(A) limits or contradicts the rules of any self-regulatory organization;

(B) limits the ability of a party to file any claim in arbitration;

(C) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(D) limits the ability of arbitrators to make any award.

(5) If an investor files a complaint in court against a funding portal member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the funding portal member and the investor, the funding portal member may seek to compel arbitration of the claims that are subject to arbitration. If the funding portal member seeks to compel arbitration of such claims, the funding portal member must agree to arbitrate all of the claims contained in the complaint if the investor so requests.

(6) All agreements shall include a statement that “No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the investor is excluded from the class by the court. Such forbearance to enforce an

agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

Form FP-NMA

Application Contact Information

Provide the following information for the person who will be the primary contact for the Funding Portal (“FP”) Applicant during FINRA’s review of the Funding Portal - New Member Application (“FP-NMA”). Note that this is the person to whom FINRA will direct application-related questions and correspondence.

Contact person

First name	
Last name	
Email address	
Phone number	
Fax number	

Mailing address

Company name	
Street address, line 1	
Street address, line 2	
City	
State	
Country	
Postal Code	

I. General Information

Provide the following business information regarding the FP Applicant:

- a. Full Name of FP Applicant;
- b. SEC File Number or IRS Tax Number;
- c. Any Other Name(s) Under Which Business Is or Will Be Conducted;
- d. Business Address;
- e. All Website Addresses Where Business Is or Will Be Conducted;
- f. Legal Status of FP Applicant (e.g., Corporation, Limited Liability Company (“LLC”), Partnership, Sole Proprietorship, or Other);
- g. State/Country of Formation;
- h. Date of Formation; and
- i. [Attach](#) corporate or analogous formation documents of the FP Applicant, and any amendments thereto.

II. Ownership

- a. [Attach](#) a current copy of the FP Applicant’s completed SEC Form Funding Portal including all schedules and, as applicable, disclosure reporting pages.
- b. Is the copy of the FP Applicant’s completed SEC Form Funding Portal accurate?

☐ Yes ☐ No

If ‘No’ is selected above, provide a detailed explanation of any changes.

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- c. [Attach](#) an organizational chart depicting: (i) the direct and indirect ownership structure and percentage interests in the FP Applicant held by entities and individuals; and (ii) any subsidiaries of the FP Applicant.

III. Associated Persons

- a. Executive Officers
Provide the names and CRD numbers (if applicable) of the individuals performing the following roles or their functional equivalents:
 - i. Chief Executive Officer;
 - ii. Chief Financial Officer;
 - iii. Chief Operations Officer; and
 - iv. Chief Compliance Officer.
- b. Supervisory Personnel
[Attach](#) an organizational chart depicting the FP Applicant's supervisory personnel and reporting lines.

IV. Activities, Procedures, and Controls

- a. Business Model and Activities
Provide a detailed written description of the FP Applicant's business model. Include, at a minimum, a description of:
 - i. the forms of compensation that will be paid to the FP or its associated persons;
 - ii. any referral fees or transaction based compensation that the FP or associated persons will pay to others;
 - iii. the types of securities to be presented to investors;
 - iv. any limitations on the types of issuers that will be presented;
 - v. how issuers will be presented to investors (e.g., website, social media platform); and
 - vi. the type and scope of any other business activities the FP Applicant intends to conduct.

- b. Recordkeeping
Describe in detail the recordkeeping policies, procedures and systems to be used by the FP Applicant.

- c. [Attach](#) the FP Applicant's written procedures. The written procedures must address, at a minimum, the following subjects:
 - i. Anti-money laundering;
 - ii. Communications with the public;
 - iii. Collection, retention, protection and review of investors' information;
 - iv. Disclosure requirements;
 - v. Due diligence;
 - vi. Investor education and affirmation; and
 - vii. Supervision.

Please ensure that the written procedures clearly state:

- i. Who: the identification of the person responsible for conducting the subject procedure;
- ii. What: a description of the specific procedure that is to be conducted by the person responsible;
- iii. When: a statement as to when or how often the specific procedure is to be conducted; and
- iv. How evidenced: a statement as to how the FP Applicant will evidence the fact that the procedure has been conducted.

d. Restricted or Prohibited Activities

The federal securities laws prohibit FPs from certain conduct, including: offering investment advice or recommendations; soliciting purchases, sales, or offers to buy the securities offered or displayed on its website or portal; compensating employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal; holding, managing, possessing, or otherwise handling investor funds or securities; and any other activities prohibited by the SEC.

- i. [Attach](#) a signed statement, executed by an FP Applicant's officer (or functional equivalent) that procedures are in place to adhere to such prohibitions and that the FP Applicant's officers (or functional equivalents) are responsible for and maintain a system of controls and supervision to ensure compliance.
- ii. [Attach](#) written procedures addressing how the FP Applicant will comply with the prohibitions (the written procedures must clearly provide the information outlined above regarding who, what, when, and how evidenced).

V. Systems, Facilities, and Contractual Relationships

a. Systems

Describe the operational systems the FP Applicant will use to conduct its business and the controls (e.g., change management, limitations on access to underlying data) to be utilized for such systems.

b. Business and Contractual Relationships

Describe the business and contractual relationships the FP Applicant will maintain to conduct its business activities. This should include, without limitation and as applicable, descriptions of the following relationships:

- i. Banks;
- ii. Broker-Dealers;
- iii. Clearing corporations;
- iv. Service bureaus;
- v. Escrow agents;
- vi. Transfer agents; and
- vii. Technology service providers.

c. [Attach](#) copies of any contracts or agreements relating to the relationships described above.

d. [Attach](#) copies of any other contracts or agreements entered into by the FP Applicant for the performance by another party of any functions identified as prohibited activities in the SEA definition of "funding portal" as enumerated in SEA Section 3(a)(80)(A) through (E) (e.g., offering investment advice or recommendations; soliciting purchases, sales or offers to buy the securities offered or displayed on the FP Applicant's website or portal; holding, managing, possessing, or otherwise handling investor funds or securities).

e. Will the FP Applicant use pre-dispute arbitration agreements?

☐ Yes ☐ No

- f. Insurance/Fidelity Bond
[Attach](#) a copy of the FP Applicant's fidelity bond.

VI. Funding

- a. Source of Funding
- i. Use the spreadsheet below to identify all persons or entities that have contributed equity capital or debt financing to the FP Applicant's business and provide information regarding the type of capital or financing.

Date	Name of Funding Source	Funding Type (e.g., debt, equity)	Amount	Transfer Instrument (e.g., wire, check)

(If additional space is needed, please submit a separate document as an additional attachment containing the information and identifying the question to which the information pertains.)

- ii. [Attach](#) documentation reflecting all funding/capitalization of the FP Applicant. The documentation provided to reflect funding/ capitalization should include:
- For each source of funding: bank statements, checks, wire instructions (or the equivalent), audited financial statements, or other evidence demonstrating the funding source's ability to make such contribution.
 - For the FP Applicant: bank statements, checks, or wire instructions (or the equivalent) covering each month that funds were deposited into the Applicant's account(s).
- b. Ongoing Operations
- i. [Attach](#) a copy of any expense sharing agreement to be utilized by the FP Applicant.
- ii. Describe plans for the FP Applicant's additional funding, should such funding become necessary in the future.

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VII. Disclosure Information

- a. Identify whether the FP Applicant or any persons associated with the FP Applicant are the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea. For each associated person, provide below the name, CRD number (if applicable), brief description of the action or investigation (including date of action or investigation), and role with the FP Applicant.

Name	CRD # (if applicable)	Event	Date of Event	Role with FP Applicant

- b. [Attach](#) a completed FP-SD Schedule.

- c. For any person identified above or in the attached FP–SD Schedule, provide a detailed description of the FP Applicant’s plan for heightened supervision of that person’s activities. In the alternative, [attach](#) a copy of the applicable heightened supervisory procedures.

Designated Signatory

I hereby certify under penalty of perjury under the laws of the United States of America, 18 U.S.C. § 1746, that the foregoing information provided by me on behalf of the FP Applicant is true and correct to the best of my knowledge, information, and belief and that I am legally authorized to make the foregoing certification on behalf of the FP Applicant.

Executed on: _____, 20_____.

Executive Officer Signature: _____

Print Name: _____

Form FP-CMA

Application Contact Information

Provide the following information for the person who will be the primary contact for the Funding Portal (“FP”) member during FINRA’s review of the Funding Portal - Continuing Member Application (“FP-CMA”). Note that this is the person to whom FINRA will direct application-related questions and correspondence.

Contact person

First name	
Last name	
Email address	
Phone number	
Fax number	

Mailing address

Company name	
Street address, line 1	
Street address, line 2	
City	
State	
Country	
Postal Code	

I. General Information

- a. Full Name of FP Member;
- b. SEC File Number or IRS Tax Number;
- c. Business Address; and
- d. All Website Addresses Where Business Is or Will Be Conducted.

II. Proposed Ownership or Control Change Information

Using the list below, identify all proposed ownership or control changes for the FP member that require the filing of an application pursuant to Funding Portal Rule 110(a)(4):

- [] A change in the equity ownership, partnership capital, Limited Liability Company (“LLC”) membership interest, or other ownership interest of the FP member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, LLC membership interest, or other ownership interest; or
- [] A change, directly or indirectly, of control persons of the FP member, other than the appointment or election of a natural person as an officer or director of the FP member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the FP member.

III. Impact of Proposed Ownership or Control Change

For each proposed ownership or control change selected above, provide an explanation addressing the impact of the proposed ownership or control change on the following components of the business of the FP member. If there will be no impact, please indicate “Not Applicable.”

a. Impact on Owners or Control Persons

Please identify all:

- i. New owners that will, directly or indirectly, own or control 25 percent or more, of the FP member; or
- ii. Persons who will, directly or indirectly, control the FP member.

--

b. Impact on Supervisory Structure and Personnel

- i. [Attach](#) a chart depicting the ownership structure reflecting the changes that will occur as a result of the proposed ownership change.
- ii. [Attach](#) a supervisory organization chart reflecting the changes to the supervisory personnel (identified specifically by name and title) that will occur as a result of the proposed ownership change.
- iii. [Attach](#) a copy of the documentation evidencing the proposed ownership or control change (e.g., purchase agreement, corporate resolutions, or equivalent documentation evidencing the proposed change).

IV. Disclosure Information

- a. Identify whether the FP member or any persons associated (or to be associated) with the FP member are the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea. For each associated person, provide below the name, CRD number (if applicable), brief description of the action or investigation (including date of action or investigation), and role with the FP member.

Name	CRD # (if applicable)	Event	Date of Event	Role with FP Applicant

- b. For any person identified above or in the FP–SD Schedule, provide a detailed description of the FP member’s plan for heightened supervision of that person’s activities. In the alternative, [attach](#) a copy of the applicable heightened supervisory procedures.

Designated Signatory

I hereby certify under penalty of perjury under the laws of the United States of America, 18 U.S.C. § 1746, that the foregoing information provided by me on behalf of the FP member is true and correct to the best of my knowledge, information, and belief and that I am legally authorized to make the foregoing certification on behalf of the FP member.

Executed on: _____, 20____.

Executive Officer Signature: _____

Print Name: _____

Attachment D**FP–SD Schedule****NOTE: FINRA MAY PUBLICLY DISCLOSE THE INFORMATION PROVIDED ON THIS PAGE****Full Name of Funding Portal****SEC File Number****Statutory Disqualification Information**

Indicate below whether this Funding Portal or any persons associated with this Funding Portal are subject to statutory disqualification as described in Securities Exchange Act (“SEA”) Section 3(a)(39).

☐

Neither this Funding Portal nor any of its associated persons are subject to a statutory disqualification as described in SEA Section 3(a)(39)

☐

This Funding Portal or one of its associated persons is subject to a statutory disqualification as described in SEA Section 3(a)(39) *(provide additional information below)*

Name	CRD Number (if applicable)	Event	Date of Event	Role with Funding Portal

(If additional space is needed, please submit a separate document as an additional attachment containing the information.)

[Attach](#) documentation (e.g., copy of court order, written description) regarding each event resulting in a statutory disqualification.

Designated Signatory

I hereby certify under penalty of perjury under the laws of the United States of America, 18 U.S.C. § 1746, that the foregoing information provided by me on behalf of the Funding Portal is true and correct to the best of my knowledge, information, and belief and that I am legally authorized to make the foregoing certification on behalf of the Funding Portal.

Executed on: _____, 20____.

Executive Officer Signature: _____

Print Name: _____

Attachment E**Funding Portal Rule 300(c) Form (with explanations of fields)****Funding Portal Rule 300(c) Reporting Requirements – Disclosure Events**

All fields marked with * are mandatory

Date: *

Funding portal members will be required to enter the date (two-digit month, day and year (MM/DD/YY)) of the submission.

Funding Portal Member Information: *

Name of the Funding Portal Member:

SEC File Number:

Funding portal members will be required to enter the firm name and the firm's SEC File Number.

Contact Person Information: *

Name:

Telephone:

Email:

Funding portal members will be required to enter the name (first and last name), telephone number and email address of the individual that should be contacted if FINRA staff has any questions regarding the submission.

Associated Person Information: *

(only complete if the disclosure relates to an associated person)

Name:

Funding portal members will be required to enter the name (first and last name) of the associated person of the funding portal member, *if any*, to which the disclosure relates. If the disclosure only relates to the funding portal member, this field should be left blank.

Disclosure Event: *

(only check one box)

- ☐ (c)(1)(A)(i) External Finding or Named in a Regulatory Proceeding
- ☐ (c)(1)(A)(ii) Written Complaint Involving Certain Allegations
- ☐ (c)(1)(A)(iii) Subject to Other Regulatory Actions
- ☐ (c)(1)(A)(iv) Criminal Actions Involving Felonies and Certain Misdemeanors
- ☐ (c)(1)(A)(v) Associated with a Financial Entity Subject to Certain Actions
- ☐ (c)(1)(A)(vi) Civil Litigation; Arbitration Matters; or Certain Claims for Damages
- ☐ (c)(1)(A)(vii) Statutory Disqualification
- ☐ (c)(1)(B) Disciplinary Action Taken by a Funding Portal Against an Associated Person
- ☐ (c)(2) Internal Conclusion

Funding portal members will be required to check the most appropriate box identifying the type of disclosure. Each checkbox corresponds to a specific paragraph in Funding Portal Rule 300(c).

Discovery Date: *

Funding portal members will be required to enter the date (two-digit month, day and year (MM/DD/YY)) that they discovered the disclosure event. For purposes of paragraphs (c)(1)(A)(i) through (c)(1)(B) of the rule, this is the date that the funding portal member knew or should have known of the disclosure event. For purposes of paragraph (c)(2) of the rule, this is the date that the funding portal member concluded or reasonably should have concluded that a reportable violation occurred.

Additional Information:
(limit ____ characters)

This is a free text field that allows funding portal members to enter any additional information that they believe is pertinent to the disclosure.

EXHIBIT 2b

Alphabetical List of Written Comments

1. Email from Kurt N. Schacht, Managing Director, and Linda L. Rittenhouse, Director, CFA Institute (“CFA Institute”), dated February 3, 2014
2. Email from T.W. Kennedy, CyberIssues.com (“CyberIssues”), dated February 2, 2014
3. Email from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute (“FSI Institute”), dated February 3, 2014
4. Email from Andrea Seidt, President, North American Securities Administrators Association, Inc. (“NASAA”), dated February 3, 2014
5. Email from Charles Polanco (“Polanco”), dated November 22, 2013
6. Email from David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation (“Heritage Foundation”), dated February 3, 2014
7. Email from Chris Charles, President, Wulff, Hanson & Co. (“Wulff”), dated January 27, 2014

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 Institute¹ 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 material 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

To:

FINRA
1735 K Street
Washington, D.C. 20006

RE: Comments for Funding Portal rules 13-34

February 2nd. 2014

The following are our comments to the proposed rules:

Considering the very limited activities of an equity funding portal, the proposed FINRA rules as publisher for comments in 13-34 are burdensome and should be simplified to reflect the funding portal's hardship to complying with some of the requirements, including the application form FP-NMA.

Furthermore, we feel the following items should be clarified or eliminated:

- 1, Proposed rule 300 (b) requires each funding portal to implement a written portal Anti-Money Laundering (AML) program.
Since funding portals are not allowed to handle or hold investors' funds, that function should be left to PayPal, or the Escrow company receiving the funds. An investor might have a U.S. address but the funds could come from Nigeria. A portal has no way to know it ! Beside it, escrow companies already been doing this as part of their service. That would be a costly duplication.
- 2, Evidence of the \$100,000 Fidelity Bond should not be required til the funding portal's application is approved. That would save 60 days worth of premium and much more in case the application is not immediately approved.
- 3, Compensating employees for securities solicitation should be better defined to eliminate gray areas. HR3606 Act only referring to soliciting investors. The Act has no reference to soliciting issuers !
- 4, An "Associated Person" should be also more narrowly defined. (on page 3 of 50 defined as) :
..... *.. controlled by a funding portal member or any employee of a funding portal member.*
Does this includes employees whose jobs are exclusively:
 - a, to inspect the issuers facilities, guiding them through the funding process and provide them with business or technical/product related advice (like V.C.-s are doing with firms they have invested in) other than providing legal or investment related advice ?
 - b, persons dealing with investor's support over the phone or internet, helping with website navigation, registration questions or credit card payment refund issues, without providing investment or legal advice ?
- 5, Funding portals would welcome a templete for *Supervisory Plan* as FINRA would prefer them. Otherwise it would take a complete Law Office to produce one, and still would be a

“hit-and-run” proposition.

6, V(b) of form FP-NMA asking for evidence of Contract.

The agreement between PayPal, Escrow companies and Transfer Agents we referring the issuers are mostly verbal in nature, and instructions are via eMail memos. The HE3606 Act also allows issuers to issue their own Stock Certificates.

7, Does a Pre-Dispute Arbitration Agreement mandatory or just an optional item ?

Respectfully submitted by,

T.W. Kennedy, B.E.

CyberIssues.com



VIA ELECTRONIC MAIL

February 3, 2014

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

Re: Regulatory Notice 13-34: Request for Comment on Proposed Funding Portal Rules

Dear Ms. Asquith:

On October 23, 2013, the Financial Industry Regulatory Authority (FINRA) published a request for comment on a set of proposed rules and related forms (collectively, the Funding Portal Rules) for SEC-registered funding portals that become FINRA members pursuant to the equity crowdfunding provisions of the Jumpstart Our Business Startups Act (JOBS Act).¹ As proposed, the Funding Portal Rules provide a streamlined process tailored to the limited scope of activities that SEC-registered funding portal would be permitted to engage in.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI and its members support the proposed goals of equity crowdfunding included in the JOBS Act. Legislative and regulatory efforts that increase American job creation and facilitate capital formation and entrepreneurship are to be encouraged, particularly for individuals and businesses that do not have ready access to capital through more traditional channels. However, FSI and its members have concerns with some aspects of equity crowdfunding that can be suitably addressed through additional guidance from FINRA and other regulators. Specifically, firms and advisors who have no interest in participating or engaging with crowdfunding offerings and intermediaries require additional information and guidance in order to avoid regulatory violations and liability for clients' investment losses in crowdfunding offerings.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a

¹ Regulatory Notice 13-34, Jumpstart Our Business Startups (JOBS) Act, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p370743.pdf>.

² The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI appreciates the opportunity to provide comments on the proposed Funding Portal Rules. We offer similar comments to FINRA on this proposal as we have submitted to the SEC regarding S7-09-13: Proposed Crowdfunding Rules.⁵ While we support the intended goals of equity crowdfunding as articulated by its supporters, there remain concerns regarding the scope of liability to firms and advisors who do not wish to engage in equity crowdfunding. Of the IBD member firms polled by FSI, none have plans to participate in equity crowdfunding in any fashion, including as funding portals. However, firms and advisors believe that the proliferation of equity crowdfunding offerings and the high visibility of these investments through internet

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

⁵ SEC Proposed Rules, “Crowdfunding,” Federal Register, Vol. 78, No. 214, November 5, 2013, p. 66428. Release Nos. 33-9470 and 34-70741; File No. S7-09-13 available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>

platforms pose a liability risk in instances where clients approach advisors regarding an interest to invest in crowdfunding offerings.

For example, an investor interested in investing in a crowdfunding venture may approach their financial advisor with directions to liquidate some of their existing investments and tell their advisor they plan to invest the money in a crowdfunding venture. If the client later loses their investment in the crowdfunding venture, they may then place blame on their financial advisor for failing to advise them of the risks or for failing to advise them against investing. Even if the investor did not inform their advisor of their intention to invest in a crowdfunding venture, the investor may claim the advisor should have inquired and advised them against investing. Other examples might include a client simply asking their advisor about a crowdfunding venture and assuming the resulting conversation constitutes financial advice. FSI members are concerned about these scenarios resulting in investors filing claims against advisors and the firms in order to recover their lost investment, even though the advisors and firms were not in any way involved in the crowdfunding venture.

Correspondingly, FSI provides the following comments:

- **Request for Regulatory Guidance:** FSI requests clear guidance regarding advisor and firm liability with respect to investment losses in equity crowdfunding offerings. FINRA should work with the SEC to provide information regarding the scope of liability for firms and advisors when an advisor is approached by a client with an inquiry regarding an investment in an equity crowdfunding offering.
- **Request for Model Waiver Language:** FSI believes that FINRA and the SEC should work together to release model waiver of liability language that advisors can provide to clients with respect to equity crowdfunding. The language could be provided to a client at the time they discuss crowdfunding with their advisor or shortly thereafter.
- **Request for Educational Website on Crowdfunding:** FINRA, perhaps in conjunction with the SEC, should also provide information regarding crowdfunding and the associated risks on a website. Potential investors could access the website to learn more about crowdfunding and firms could easily direct clients to the website in the waiver language or in other educational efforts.
- **Retrospective Review of Funding Portals:** FSI and its member continue to support FINRA's efforts to conduct economic impact assessments and cost-benefit analysis for proposed and current rules. FINRA's efforts in this regard have been welcome and encouraging, including last year's hiring of FINRA's Chief Economist as well as the publication of the Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking.⁶ The proposed Funding Portal Rules provide an excellent opportunity for FINRA to conduct a retrospective economic impact assessment due to the unprecedented divergence between traditional broker-dealer practices and the provisions of the JOBS Act related to equity crowdfunding. Any such retrospective economic assessment should examine whether the relaxed funding portal rules were actually effective in protecting investors or whether additional requirements should be adopted to improve investor protection.

⁶ Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking, available at <http://www.finra.org/web/groups/industry/documents/industry/p346389.pdf>.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

February 3, 2014

Via electronic submission to pubcom@finra.org

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1506

RE: Comments in Response to Regulatory Notice 13-34 Regarding Proposed Funding Portal Rules and Related Forms.

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (NASAA) appreciates this opportunity to provide comment in response to your Regulatory Notice 13-34 regarding the proposed regulation of funding portals. Each member of NASAA has a keen interest in the FINRA rules that will govern funding portals because Section 305 of the Jumpstart Our Business Startups Act (“JOBS Act”) preserves the authority of a state securities regulator to conduct examinations and bring enforcement actions with respect to a funding portal whose principal place of business is located within that state. However, the state rules cannot exceed federal requirements, so state regulators are put in the position of enforcing regulations that are essentially promulgated by a third party. Accordingly, we would appreciate your fullest consideration of our comments as you undertake the rulemaking process.

1. Funding Portals Should be Required to Use the Central Registration Depository.

The Central Registration Depository (“CRD”) was designed to provide an efficient process for firms and individuals to apply for federal and state licenses in one coordinated filing system. To maximize the effectiveness of the system, FINRA Rule 1010(a) requires a broker-dealer to file all forms through the CRD.

A funding portal may be subject to registration with its home state as well as the Securities and Exchange Commission. To make the registration process as efficient as possible, we urge you to mandate the use of the CRD for the filing of the SEC’s proposed Form Funding Portal and related forms.

President: Andrea Seidt (Ohio)
President-Elect: William Beatty (Washington)
Past-President: A. Heath Abshire (Arkansas)
Executive Director: Russel Luculano

Secretary: Judith Shaw (Maine)
Treasurer: Melanie Senter Lubin (Maryland)
Ombudsman: Fred Joseph (Colorado)

Directors: Joe Borg (Alabama)
Douglas R. Brown (Manitoba)
Michael Rothman (Minnesota)
Daphne D. Smith (Tennessee)

2. An Associated Person of a Funding Portal Should be Required to Obtain a License.

Your request for comment states that the proposed rules do not include licensing requirements for associated persons because “they do not appear necessary in light of the limited activities of funding portals.” On the contrary, funding portals are engaging in the most fundamental aspect of the securities business – being paid to help people buy and sell securities. Any person who represents a funding portal in effecting or attempting to effect the purchase or sale of securities is undertaking essentially the same role as an associated person of a broker-dealer and should, therefore, be subject to similar licensing requirements.

Licensure provides a layer of protection that is important for the customers of a funding portal. Those customers include not only the investors, but also the small issuers who rely upon the services of the funding portal. Licensure ensures that individuals operate in a professional manner and are individually accountable for misconduct.

Even if an associated person may be subject to sanctions under the proposed rules, it appears that complaints, terminations, and other pertinent information about associated persons would not be publicly disclosed. By subjecting associated persons of funding portals to licensure and disclosure obligations similar to those of registered representatives, regulators would be better equipped to police the migration of bad actors from funding portal to funding portal or to other segments of the financial markets.

Under the proposed rules, certain associated persons of a funding portal are given specific responsibilities. For example, proposed Rule 300(a)(1)(B) requires “the designation of a person with authority to carry out the supervisory responsibilities of the funding portal members,” and Rule 300(b)(1)(D) requires the designation of an anti-money laundering compliance person. At a minimum, FINRA should require licensure for any person who is in a position with specific responsibilities under the funding portal rules and should give further consideration to requiring passage of qualification examinations that demonstrate a minimum level of competency to perform the assigned tasks.

3. The Funding Portal Conduct Rule Should be Enhanced to More Closely Align with the Conduct Rules for Broker-Dealers.

We recognize that not all of the existing conduct rules for broker-dealers are appropriate for the more limited business model of a funding portal. However, your proposal pares back many rules that seem applicable in the crowdfunding context. We urge you to adopt the following rules or their substantial equivalents for funding portals:

- a. Rule 2150: Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts. This rule prohibits guaranteeing a customer against losses or sharing in the profits or losses in a customer’s account.
- b. Rule 2210(d)(1): Communications with the Public – Content Standards. This rule requires communications with the public to be truthful. The proposed rule would apply

much of existing Rule 2210(d)(1) to funding portals, but it is not apparent why the proposal fails to include rules that are similar in nature to 2210(d)(1)(C) through (E).

- c. Rule 3220: Influencing or Rewarding Employees of Others. This rule prohibits a FINRA member from paying “gratuities” to non-employees, including persons affiliated with an issuer.
- d. Rule 3240: Borrowing From or Lending To Customers. This rule prohibits borrowing money from or lending to a customer.
- e. Rule 5230: Payments Involving Publications that Influence the Market Price of a Security. This rule prohibits the paid touting of a security to influence its price.
- f. Rule 5110: Corporate Financing Rule – Underwriting Terms and Arrangements. Subsection (c)(1) of this rule prohibits unreasonable underwriting expenses or other terms. Subsection (f)(1) prohibits participation in an offering that is unfair or unreasonable in other respects.

These rules are designed to address conflicts of interest and other practices that have historically led to the abuse of investors by broker-dealers. In fact, FINRA recently published a Report on Conflicts of Interest noting that “conflicts are widespread across the financial services industry.”¹ Investors in crowdfunded securities are susceptible to the same conflict-related abuses, so relevant protections should be extended to the customers of funding portals. The rules described above are relatively clear, easy to follow, and not unduly burdensome, particularly when weighed against the benefits they provide for investors.

4. Funding Portals Should be Prohibited from Placing Mandatory Predispute Arbitration Agreements in their Customer Agreements.

While NASAA has no objection to the use of voluntary arbitration clauses in customer agreements, we strongly oppose the imposition of mandatory pre-dispute arbitration agreements (“PDAAs”). In the context of crowdfunding, these agreements are especially troubling because the small investment amounts may diminish an investor’s bargaining power. Moreover, a crowdfunding investor may wish to bring claims against both the funding portal and the issuer, and it appears the investor could be forced to bring the related claims in separate forums if the funding portal uses a PDAa requiring FINRA arbitration.

While NASAA has advocated for reforms to the dispute resolution process involving investors, the fundamental problem remains that individual investors should not be prohibited from choosing the forum in which they can pursue their claims against their investment professionals, even if their claims are small. Investors should be given the option to have the law applied to their claims, pursue full discovery, appeal the decision, have a written decision explaining the outcome, pursue claims in a public venue open to public review, allow the development of the law, and prevent corruption.

¹ See <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf>.

The proposed rules acknowledge the need for streamlined oversight given the limited scope of activity of funding portals, but the proposed arbitration rules do not share that same approach. The very nature and purpose of funding portals and their anticipated customer base would require a greatly simplified and less expensive version of the traditional broker-dealer dispute resolution venue. Requiring these new members and their customers to be subject to the same process does not consider the limited nature of the transaction for either the purchaser or issuer, both of whom are clients of the proposed member.

Many investor claims may be appropriate for class actions, and we support your proposal to prohibit class action waivers because the court system is best suited for these claims. Similarly, though, the small claims process in civil court is well-suited for individual small dollar claims, and customers should have the option to use it instead of an arbitration forum.

For those parties who wish to pursue arbitration, NASAA recommends, the following additional accommodations:

- a. Hearing locations. The existing number of hearing locations may not be sufficient given the envisioned mass appeal of crowdfunding and the potential for investors to be located anywhere in the country, including remote rural areas of large land mass states. The best way to serve aggrieved clients is to enable them to file a complaint in their local county courthouse if they choose.
- b. Fees. The goal of crowdfunding is to attract numerous small dollar investments. The current FINRA Dispute Resolution fee structure is not practical for remedying grievances of such small amounts, and it will discourage investors from pursuing claims at all. Retaining the right to file a grievance in small claims court would be more affordable.
- c. Arbitrator Pool. NASAA supports the recently revised panel approach, which defaults to the All Public Panel, and we recommend the same for the funding portal rules. In addition, the current "industry non-public" arbitrator profile may not be appropriate for this audience. Efforts to recruit representation from the crowdfunding portal industry will be required to make this resource effective for its function on the panel. However, the list of "non-public" arbitrators for funding portals should be kept separate from the list for other types of FINRA arbitrations.

5. Funding Portals Should be Required to Maintain Books and Records to Demonstrate Compliance with FINRA Rules.

The SEC has proposed a recordkeeping rule for funding portals in Rule 404 of Regulation Crowdfunding. Those rules will require funding portals to maintain a variety of records for five years, including communications with issuers and investors, records of transactions, and other "records required to demonstrate compliance" with the SEC rules governing funding portals.

We recognize that FINRA will have the ability to enforce the SEC's recordkeeping rules. However, FINRA should adopt its own recordkeeping rule to require, at a minimum, that

funding portals maintain any record that is required to demonstrate compliance with the FINRA Rules.

6. The Grounds for a Fine Should Include the Failure to Maintain an Adequate Fidelity Bond.

In existing Rule 9217, a broker-dealer is subject to a fine for failure to maintain adequate fidelity bond coverage. However, in the proposed corresponding rule for funding portals, Rule 900(a)(4), the failure to maintain a fidelity bond is not listed among the grounds for a fine. There is no apparent reason why a funding portal should be treated different than a broker-dealer in this respect. Given that FINRA has not articulated a reason for the omission of this important requirement, we would urge that it be included for funding portals.

Conclusion

NASAA supports FINRA's efforts to establish a rational regulatory framework that is workable for funding portals but provides an adequate level of protection for issuers and investors. We believe the comments we have noted above are representative of just such an approach.

If you would like further information or clarification, please contact me or NASAA's General Counsel, Joseph Brady, at (202) 737-0900.

Sincerely,

A handwritten signature in black ink that reads "Andrea Seidt". The signature is written in a cursive, flowing style.

Andrea Seidt
NASAA President
Ohio Securities Commissioner

Dear Finra,

I am emailing you over great concerns regarding the initial cost for issuers seeking capital through equity crowdfunding III.

Some are saying that the initial cost can reach thousands to seek capital through equity crowdfunding III. This concerns me greatly because a “small percentage” of offerings get funded. This means that issuers seeking capital from equity crowdfunding III are risking money with the hope they will succeed in raising capital. What would in my opinion become a headache for Finra. This, I believe, will deter many from seeking financing through equity crowdfunding III derailing what the law was intended, to create jobs.

Many offerings based on rewards, such as those offerings made through Kickstarter, are not funded. But the “issuer” doesn’t risk upfront capital. They pay a fee when they get funded. If people have to pay thousands to raise money through Kickstarter, Kickstarter would not exist.

If I want to start a restaurant and seek \$1m capital from equity crowdfunding III, if I raise only 10% of my intended goal, I just lost \$1000s, well maybe that’s a good thing, because no one with business savvy would do such a thing.

This is different from an S1 prospectus filing where the issuer has a list of investors prior to paying the cost for an S1. But with equity crowdfunding it’s truly a gamble, issuers do not know how many “investors” the fundfunding portal truly has, and the number of investors that truly are interested in a restaurant offering’s. This means that the issuer is not only risking money but also hoping that the funding portal has sufficient investors that are interested in the offering made. Too many unknown unknowns.

When I heard about this all I could think about was healthcare.gov

If you are not the person(s) that I should contact please forward my email to the right person(s) or provide me with an email.

Thank you,
Charles Polanco

<http://www.crowdfundinsider.com/2013/11/26291-sec-made-equity-crowdfunding-economically-unfeasible/>

February 3, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-150

Via email to rule-comments@sec.gov

Dear Ms. Asquith:

I am pleased to provide these comments on the proposed funding portal rules.¹

Introduction

Title III of the JOBS Act² provides a crowdfunding exception to the registration requirements of the Securities Act of 1933. The crowdfunding exception will allow small issuers to raise, subject to substantial regulation, up to \$1 million a year in small increments from ordinary investors through a registered funding portal via the internet. State Blue Sky laws regarding registration and qualification are preempted.

Crowdfunding has the potential to substantially improve small firms' access to capital provided that the regulatory framework adopted by the Commission and FINRA does not impose prohibitive costs on either issuers or funding portals. It also will enable ordinary investors access to investments in start-up companies that ordinarily only accredited investors have access to. The primary advantages of crowdfunding are that it will enable small firms to access small investments from the broader public (i.e. from non-accredited investors) and that resale of the stock will not be restricted after one year. If, however, the regulatory costs associated with crowdfunding are too high, then issuers will either use other means to raise capital or be unable to raise capital and ordinary investors will be denied the opportunity to make these investments.

Firms using crowdfunding will almost invariably be the smallest of small businesses. More established firms or those seeking more than \$1 million will use Regulation D or, perhaps, Regulation A+. If the Commission and FINRA overregulate crowdfunding, it will frustrate the bi-partisan intention of Congress and the President and impede both the ability of small firms to raise the capital they need to create jobs, innovate and contribute to the prosperity of the country and the ability of small investors to invest in the firms with the most potential growth. This is no idle possibility. The history of the small issues exemption and Regulation A demonstrates that overregulation can destroy the usefulness of an exemption. Recall, Regulation A as currently constituted is seldom used.³ It is simply too costly.

¹ Regulatory Notice 13-34, "FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms," October, 2013.

² Jumpstart Our Business Startups Act, Public Law 112–106, Apr. 5, 2012.

³ "Factors That May Affect Trends in Regulation A Offerings," United States Government Accountability Office, July 2012 [GAO-12-839]

The structure of the JOBS Act shows that Congress clearly intended to create a category of regulated intermediary – a funding portal – that was more lightly regulated than a broker-dealer. FINRA has an obligation to make this less regulated category work as intended by Congress and to not so heavily regulate non broker-dealer funding portals that they make no economic sense.

The proposed FINRA funding portal rules may well do just that.

Anti-Money Laundering

Proposed rule 300(b) would require funding portals to comply with Anti-Money Laundering (AML) and the associated “Know Your Customer” requirements, to file suspicious activity reports (SARs) and comply with other aspects of the Bank Secrecy Act. This is a mistake of the first order. These rules are so complex and expensive to comply with that many European banks are now unwilling to accept U.S. customers and are terminating their relationship with existing U.S. customers.

Funding portals do not handle customer funds. The JOBS Act prohibits them from doing so. The banks and broker-dealers that do handle customer funds must comply with these rules. It is inappropriate to require funding portals to comply with these rules because the ability to engage in, or facilitate, money laundering does not exist to any meaningful degree and the costs of complying with these rules are likely to be so high as to make funding portals uneconomic. It will result in a situation where the only intermediaries are broker-dealers. It will frustrate the intention of Congress to establish a more lightly regulated intermediary class.

Neither FINRA nor the Commission are likely to hear much about this at this juncture since most of the people who are considering establishing a funding portal are entirely unaware of the burden these rules impose. But make no mistake, this provision will suffocate funding portals as a separate intermediary class.

Fidelity Bonds

Proposed rule 110(b) would require a funding portal to have a fidelity bond of \$100,000 covering losses related to fidelity, on premises, in transit and forgery and alteration, with a 10 percent deductible allowed. This bond would protect the portal from employee theft or embezzlement or other wrongdoing. Unlike a surety bond, it would not protect customers from having their funds stolen but since funding portals are prohibited from holding customer funds, this issue is of limited concern.

It is not clear that FINRA should require a fidelity bond. The risk of employee theft or embezzlement from a firm that does not hold cash or customer funds does not appear particularly high. Obtaining the bond is simply one more expense that the portal must incur and it is necessary to control compliance related costs if funding portals are to be a success.

The SEC is seeking comment regarding whether or not it should impose “some other requirement” on funding portals, “like insurance or something similar to SIPC.” Neither the

Commission nor FINRA should do so. The costs would be too high and the added protection to the investing public minimal.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. R. Burton', with a long horizontal flourish extending to the right.

David R. Burton
Senior Fellow in Economic Policy
The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
202-608-6229 (direct dial)
David.Burton@heritage.org

WULFF, HANSEN & Co.
ESTABLISHED 1931
INVESTMENT BANKERS
351 CALIFORNIA STREET, SUITE 1000
SAN FRANCISCO 94104
(415) 421-8900

January 27, 2014

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

Dear Ms. Asquith:

Thank you for the opportunity to comment on Regulatory Notice 13-34 on proposed rules for Funding Portals. Wulff, Hansen & Co. is a registered broker/dealer and FINRA member. The writer currently serves on FINRA's Small Firm Advisory Board but the views and comments expressed herein are those of the firm and do not necessarily reflect those of the SFAB.

We commend FINRA for its efforts to craft a regulatory regime that will allow Funding Portal Members to operate without regulatory strictures that are unnecessary or inappropriate for their limited role yet contain reasonable protections for both the public and the issuers of securities.

In general we support most of the Rules as proposed, but believe they are weakened by the lack of a licensing requirement to provide an objective basis for the judgment that an Applicant can comply with the relevant laws and regulations. We also believe that some sort of capital requirement or financial responsibility rule is necessary to protect not only investors but the issuers who will rely on the portals in the process of raising capital. While the Regulatory Notice mentions only protecting investors, issuers using the portals deserve protections as well.

Licensing:

We strongly believe that at least some associated persons of funding portals should be subject to a licensing requirement. Licensing requirements are a fundamental part of carrying out FINRA's mission of protecting the public, both issuers and investors. While funding portals may not sell investments directly, they will play a key role in connecting investors with investments and thus it is reasonable that some of their associated persons should have at least a minimal level of professional qualification. Such a requirement might be applied only to certain senior managerial or supervisory roles, but to have a FINRA member with not a single person who has empirically demonstrated knowledge of the laws and regulations governing that member's business is contrary to any existing practice as well as to common sense.

The requirement that the portal itself must apply for and receive registration with FINRA by meeting certain standards already acknowledges this need: Proposed Funding Portal Rule 110 states in part that one of these standards requires that "The FP Applicant and its associated persons are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules...". Unfortunately, without a licensing requirement the judgment as to whether an FP and its associated persons "are capable" becomes an exercise in subjectivity. Setting specific standards of professional qualification and requiring applicants to demonstrate their knowledge of them by examination avoids such subjectivity and protects both applicants and FINRA from the possibility that persons similarly situated could receive different treatment during the application process.

The proposed Funding Portal Rules also require that FP Members develop and operate a supervisory system designed to ensure their compliance with the relevant laws and regulations. Without some empirical measure of management's understanding of these laws and regulations, how can one reasonably form the belief that they will be capable of creating and enforcing a reliable supervisory system? The first step in supervising activities is to thoroughly understand them, and the current proposal contains no empirical means of demonstrating that an Applicant's staff has such an understanding.

We realize that developing a set of professional qualifications and an appropriate examination takes time. Since the proposed Rules already indicate that qualifications will have to be defined internally by FINRA in order for it to determine that the applicant and its associated persons “are capable of complying...”, the only remaining task would be to develop an examination to verify that capacity. If public policy requires that the new portals begin operating without additional delay while the examination is developed, Applicants could be approved on a temporary basis using the subjective standards in the proposed Rule and be required to pass the qualifying examination within a reasonable period of time after it becomes available. We note that the SEC and MSRB are taking a somewhat similar approach to the new registration requirement for Municipal Financial Advisors by allowing them to register and operate now while the MSRB proceeds to develop appropriate professional qualification requirements for future applicants.

We would also support a process by which persons clearly qualified by reason of prior experience or professional qualifications could apply for an exception to the examination requirement. This has been done in the past in connection with other licenses and appears to have worked well.

Financial Responsibility:

The Regulatory Notice asks whether portals should be subject to a financial responsibility requirement. We believe that they should be, and such a requirement is more appropriate for the business of a funding portal than is the proposed fidelity bond requirement. Financial responsibility and net capital requirements exist to protect the public. Given that most current FINRA members are introducing broker/dealers, holding neither funds nor securities on behalf of customers, for those firms the financial responsibility rules are not necessary to protect customer assets since they hold none. Therefore, it appears that their application to non-carrying firms is to ensure that a member firm is unlikely to fail or disappear without warning to FINRA. Why would that consideration not apply to portal Members as well?

As FINRA members, albeit rather limited ones, funding portals should be subject to a system of at least minimal financial oversight in order to provide early warning should the member encounter financial difficulty. Issuers depending on the portal for their capital-raising needs should not be subject to the risk that the portal could disappear overnight, and neither should investors who are accustomed to using the portal to help identify investments.

Such a regime could be very simple and basic since its sole purpose would be to prevent unforeseen and abrupt shutdowns from harming issuers or investors. A portal whose financial filings (perhaps a much-simplified version of the FOCUS) indicated that it was encountering financial distress could be subjected to restrictions similar to those now applying to traditional FINRA members, i.e., a prohibition on taking on new business followed by (if the financial difficulties are not resolved), a reduction in business, an orderly transfer of its business to another portal if one can be found, or an orderly shutdown if that outcome better fits the circumstances.

In short, we believe that FINRA should never be in the position of seeing a FINRA member of any type abruptly close its doors without any prior warning or alarms. To create a situation where such an event is possible would arguably put FINRA in the position of having ‘failed to supervise’ the portal Member, and would indisputably pose a reputational risk to FINRA itself and to its other member firms. It would shake public confidence in both the funding portals and in FINRA’s oversight in general. FINRA membership is a promise to the public that a member firm’s demise will be handled in a businesslike manner, and that promise should be kept regardless of the member’s business model.

Thank you again for the opportunity to comment.

Sincerely,

Chris Charles
President

Exhibit 3a. Form FP-NMA**Form FP-NMA****Application Contact Information**

Provide the following information for the person who will be the primary contact for the Funding Portal (“FP”) Applicant during FINRA’s review of the Funding Portal - New Member Application (“FP-NMA”). Note that this is the person to whom FINRA will direct application-related questions and correspondence.

Contact person

First name
Last name
Email address
Phone number

I. General Information

Provide the following business information regarding the FP Applicant:

- | | |
|---|--|
| a. Full Name of FP Applicant: | |
| b. SEC File No. : | |
| c. Any Other Name(s) Under Which Business Is or Will Be Conducted: | |
| d. Business Address: | |
| e. All Website Addresses Where Business Is or Will Be Conducted: | |
| f. Legal Status of FP Applicant (e.g., Corporation, Limited Liability Company (“LLC”), Partnership, Sole Proprietorship, or Other): | |
| g. State/Country of Formation: | |
| h. Date of Formation: | |
| i. Attach corporate or analogous formation documents of the FP Applicant, and any amendments thereto. | |

II. Ownership

- a. Is the FP Applicant’s completed SEC Form Funding Portal accurate?

☐ Yes ☐ No

Provide a detailed explanation of any changes. (The FP Applicant is also reminded to file an updated SEC Form Funding Portal with the SEC and to provide a copy of such to FINRA.)

--

- b. [Attach](#) an organizational chart depicting: (i) the direct and indirect ownership structure and percentage interests in the FP Applicant held by entities and individuals; and (ii) any subsidiaries of the FP Applicant.

III. Associated Persons

a. Executive Officers

Provide the names and CRD Numbers of the individuals performing the following roles or their functional equivalents:

- i. Chief Executive Officer:
- ii. Chief Financial Officer:
- iii. Chief Operations Officer:
- iv. Chief Compliance Officer:
- v. Executive Representative:

Full Name	CRD Number (if applicable)	Officer's Email Address

b. Supervisory Personnel

[Attach](#) an organizational chart depicting the FP Applicant's supervisory personnel and reporting lines.

IV. Activities, Procedures, and Controls

a. Business Model and Activities

Provide a detailed written description of the FP Applicant's business model. Include, at a minimum, a description of:

- i. the forms of compensation that will be paid to the FP or its associated persons;
- ii. any referral fees or transaction based compensation that the FP or associated persons will pay to others;
- iii. the types of securities to be presented to investors;
- iv. any limitations on the types of issuers that will be presented;
- v. how issuers will be presented to investors (e.g., website, social media platform); and
- vi. the type and scope of any other business activities the FP Applicant intends to conduct.

b. Recordkeeping

Describe in detail the recordkeeping policies, procedures and systems to be used by the FP Applicant.

c. [Attach](#) the FP Applicant's written procedures. The written procedures must address, at a minimum, the following subjects:

- i. Communications with the public;
- ii. Collection, retention, protection and review of investors' information;
- iii. Criteria for limiting, highlighting and sorting offerings on the FP Applicant's platform;
- iv. Disclosure requirements;
- v. Due diligence;
- vi. Investor education and affirmation; and
- vii. Supervision.

Please ensure that the written procedures clearly state:

- i. Who: the identification of the person responsible for conducting the subject procedure;
- ii. What: a description of the specific procedure that is to be conducted by the person responsible;

- iii. When: a statement as to when or how often the specific procedure is to be conducted; and
- iv. How evidenced: a statement as to how the FP Applicant will evidence the fact that the procedure has been conducted.

d. **Restricted or Prohibited Activities**

The federal securities laws prohibit FPs from certain conduct, including: offering investment advice or recommendations; soliciting purchases, sales, or offers to buy the securities offered or displayed on its website or portal; compensating employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal; holding, managing, possessing, or otherwise handling investor funds or securities; and any other activities prohibited by the SEC.

- i. **Attach** a signed statement, executed by an FP Applicant's officer (or functional equivalent) that procedures are in place to adhere to such prohibitions and that the FP Applicant's officers (or functional equivalents) are responsible for and maintain a system of controls and supervision to ensure compliance.
- ii. **Attach** written procedures addressing how the FP Applicant will comply with the prohibitions. (The written procedures must clearly provide the information outlined above regarding who, what, when, and how evidenced.)

V. **Systems, Facilities, and Contractual Relationships**

a. **Systems**

- i. Describe the operational systems the FP Applicant will use to conduct its business and the controls (e.g., change management, limitations on access to underlying data) to be utilized for such systems.

--

- ii. Provide the address and log-in credentials for the FP Applicant's site for use by staff in evaluating the operational readiness of the funding portal platform.

Address (URL):

User Name:

Password:

b. **Business and Contractual Relationships**

Describe the business and contractual relationships the FP Applicant will maintain to conduct its business activities. This should include, without limitation and as applicable, descriptions of the following relationships:

- i. Banks;
- ii. Broker-Dealers;
- iii. Clearing corporations;
- iv. Service bureaus;
- v. Escrow agents;
- vi. Transfer agents; and
- vii. Technology service providers.

--

- c. **Attach** copies of any contracts or agreements relating to the relationships described above.

- d. [Attach](#) copies of any other contracts or agreements entered into by the FP Applicant for the performance by another party of any functions identified as prohibited activities in the SEA definition of “funding portal” as enumerated in SEA Section 3(a)(80)(A) through (E) (e.g., offering investment advice or recommendations; soliciting purchases, sales or offers to buy the securities offered or displayed on the FP Applicant’s website or portal; holding, managing, possessing, or otherwise handling investor funds or securities).
- e. Will the FP Applicant use pre-dispute arbitration agreements?
- ☐ Yes ☐ No

VI. Funding

- a. Source of Funding
- i. Use the spreadsheet below to identify all persons or entities that have contributed equity capital or debt financing to the FP Applicant's business and provide information regarding the type of capital or financing.

Date	Name of Funding Source	Funding Type (e.g., debt, equity)	Amount	Transfer Instrument (e.g., wire, check)

- ii. [Attach](#) documentation reflecting all funding/capitalization of the FP Applicant. The documentation provided to reflect funding/ capitalization should include:
- For each source of funding: bank statements, checks, wire instructions (or the equivalent), audited financial statements, or other evidence demonstrating the funding source’s ability to make such contribution.
 - For the FP Applicant: bank statements, checks, or wire instructions (or the equivalent) covering each month that funds were deposited into the Applicant’s account(s).
- b. Ongoing Operations
- i. [Attach](#) a copy of any expense sharing agreement to be utilized by the FP Applicant.
- ii. Describe plans for the FP Applicant’s additional funding, should such funding become necessary in the future.

VII. Disclosure Information

- a. Is the FP Applicant or any persons associated with the FP Applicant the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea?
- ☐ Yes ☐ No

For each associated person subject to such an event, provide below their name and CRD Number as well as a brief description of the event(s), the date(s) of the event(s) and the role of the associated person with the FP Applicant.

Name	CRD Number (if applicable)	Description of the Event	Date of the Event	Role with FP Applicant

- b. For any person identified above, provide a detailed description of the FP Applicant's plan for any heightened supervision of that person's activities. In the alternative, [attach](#) a copy of the applicable heightened supervisory procedures.

Designated Signatory

I hereby certify under penalty of perjury under the laws of the United States of America, 28 U.S.C. § 1746, that the foregoing information provided by me on behalf of the FP Applicant is true and correct to the best of my knowledge, information, and belief and that I am legally authorized to make the foregoing certification on behalf of the FP Applicant.

Executed on: _____, 20____.

Print Executive Officer Name: _____

Exhibit 3b. Form FP-CMA**Form FP-CMA****Application Contact Information**

Provide the following information for the person who will be the primary contact for the Funding Portal (“FP”) member during FINRA’s review of the Funding Portal - Continuing Member Application (“FP-CMA”). Note that this is the person to whom FINRA will direct application-related questions and correspondence.

Contact person

First name

Last name

Email address

Phone number

I. General Information

- a. Full Name of FP Member:
- b. SEC File No.:
- c. Business Address:
- d. All Website Addresses Where Business Is or Will Be Conducted:

II. Proposed Ownership or Control Change Information

Using the list below, identify all proposed ownership or control changes for the FP member that require the filing of an application pursuant to Funding Portal Rule 110(a)(4):

- ☐ A change in the equity ownership, partnership capital, Limited Liability Company (“LLC”) membership interest, or other ownership interest of the FP member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, LLC membership interest, or other ownership interest; or
- ☐ A change, directly or indirectly, of control persons of the FP member, other than the appointment or election of a natural person as an officer or director of the FP member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the FP member.

III. Impact of Proposed Ownership or Control Change

For each proposed ownership or control change selected above, provide an explanation addressing the impact of the proposed ownership or control change on the following components of the business of the FP member. If there will be no impact, please indicate “Not Applicable.”

- a. Impact on Owners or Control Persons

Please identify all:

- i. New owners that will, directly or indirectly, own or control 25 percent or more, of the FP member; or
- ii. Persons who will, directly or indirectly, control the FP member.

--

- b. Impact on Supervisory Structure and Personnel
- i. [Attach](#) a chart depicting the structure reflecting the changes that will occur as a result of the proposed ownership or control change.
 - ii. [Attach](#) a supervisory organization chart reflecting the changes to the supervisory personnel (identified specifically by name and title) that will occur as a result of the proposed ownership or control change.
 - iii. [Attach](#) a copy of the documentation evidencing the proposed ownership or control change (e.g., purchase agreement, corporate resolutions, or equivalent documentation evidencing the proposed change).
 - iv. [Attach](#) documentation evidencing the proposed financing or other consideration for the change in ownership or control change (e.g., bank statements).

IV. Disclosure Information

- a. Is the FP member or any persons associated (or to be associated) with the FP member the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea?

☐ Yes ☐ No

For each associated person subject to such an event, provide below their name and CRD Number as well as a brief description of the event(s), the date(s) of the event(s) and the role of the associated person with the FP member.

Name	CRD Number (if applicable)	Description of the Event	Date of the Event	Role with FP Applicant

- b. For any person identified above, provide a detailed description of the FP member's plan for any heightened supervision of that person's activities. In the alternative, [attach](#) a copy of the applicable heightened supervisory procedures.

Designated Signatory

I hereby certify under penalty of perjury under the laws of the United States of America, 28 U.S.C. § 1746, that the foregoing information provided by me on behalf of the FP member is true and correct to the best of my knowledge, information, and belief and that I am legally authorized to make the foregoing certification on behalf of the FP member.

Executed on: _____, 20____.

Print Executive Officer Name: _____

Exhibit 3c. Funding Portal Rule 300(c) Form

Funding Portal Rule 300(c) Form (with explanations of fields)

Funding Portal Rule 300(c) Reporting Requirements – Disclosure Events

All fields marked with * are mandatory

Date: *

Funding portal members will be required to enter the date (two-digit month, day and year (MM/DD/YY)) of the submission.

Funding Portal Member Information: *

Name of the Funding Portal Member:

SEC File Number:

Funding portal members will be required to enter the firm name and the firm's SEC File Number.

Contact Person Information: *

Name:

Telephone:

Email:

Funding portal members will be required to enter the name (first and last name), telephone number and email address of the individual that should be contacted if FINRA staff has any questions regarding the submission.

Associated Person Information: *

(only complete if the disclosure relates to an associated person)

Name:

Funding portal members will be required to enter the name (first and last name) of the associated person of the funding portal member, *if any*, to which the disclosure relates. If the disclosure only relates to the funding portal member, this field should be left blank.

Disclosure Event: *

(only check one box)

- ☐ (c)(1)(A)(i) External Finding or Named in a Regulatory Proceeding
- ☐ (c)(1)(A)(ii) Written Complaint Involving Certain Allegations
- ☐ (c)(1)(A)(iii) Subject to Other Regulatory Actions
- ☐ (c)(1)(A)(iv) Criminal Actions Involving Felonies and Certain Misdemeanors
- ☐ (c)(1)(A)(v) Associated with a Financial Entity Subject to Certain Actions
- ☐ (c)(1)(A)(vi) Civil Litigation; Arbitration Matters; or Certain Claims for Damages
- ☐ (c)(1)(A)(vii) Statutory Disqualification
- ☐ (c)(1)(B) Disciplinary Action Taken by a Funding Portal Against an Associated Person
- ☐ (c)(2) Internal Conclusion

Funding portal members will be required to check the most appropriate box identifying the type of disclosure. Each checkbox corresponds to a specific paragraph in Funding Portal Rule 300(c).

Discovery Date: *

Funding portal members will be required to enter the date (two-digit month, day and year (MM/DD/YY)) that they discovered the disclosure event. For purposes of paragraphs (c)(1)(A)(i) through (c)(1)(B) of the rule, this is the date that the funding portal member knew or should have known of the disclosure event. For purposes of paragraph (c)(2) of the rule, this is the date that the funding portal member concluded or reasonably should have concluded that a reportable violation occurred.

Additional Information:
(limit ____ characters)

This is a free text field that allows funding portal members to enter any additional information that they believe is pertinent to the disclosure.

Exhibit 3d. Form FP-Statement of Revenue

Form FP-Statement of Revenue

Pursuant to Funding Portal Rule 300(e), each funding portal member must report its gross revenue on this form no later than 60 calendar days following the end of the calendar year.

GENERAL INFORMATION

Full Name of Funding Portal Member: _____

SEC File Number: _____

Organization ID: _____

IRS Tax Number: _____

Business Address: _____

Website Address(es) at which Business is Conducted: _____

IN THE SPACE BELOW, INDICATE GROSS REVENUE EARNED IN THE CALENDAR YEAR INDICATED

For the period 01/01/2XXX to 12/31/2XXX

Total: \$_____

Designated Signatory

I hereby certify under penalty of perjury under the laws of the United States of America, 28 U.S.C. § 1746, that the foregoing information provided by me on behalf of [name of funding portal] is true and correct to the best of my knowledge, information, and belief and that I am legally authorized to make the foregoing certification on behalf of [name of funding portal].

Executed on: _____, 20____.

Executive Officer Signature:

Print Name:

Exhibit 5

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

Funding Portal Rules

Table of Contents

100. General Standards

(a) Application of the By-Laws and the Funding Portal Rules

(b) Definitions

110. Funding Portal Application

(a) Application Process

200. Funding Portal Conduct

(a) Standards of Commercial Honor and Principles of Trade

(b) Use of Manipulative, Deceptive or Other Fraudulent Devices

(c) Communications with the Public

300. Funding Portal Compliance

(a) Supervisory System

(b) Executive Representative

(c) Reporting Requirements

(d) Contact Information Requirements

(e) Statement of Gross Revenue

(f) Record of Associated Persons of the Funding Portal Member

800. Investigations and Sanctions

(a) Application of FINRA Rule 8000 Series (Investigations and Sanctions) to Funding Portals

(b) Public Disclosure of Information on Funding Portals

900. Code of Procedure

(a) Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals

(b) Eligibility Proceedings

1200. Arbitration and Mediation

(a) Application of FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure) to Funding Portals

(b) Predispute Arbitration Agreements for Investor Accounts

100. General Standards

(a) Application of the By-Laws and the Funding Portal Rules

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. Persons associated with a funding portal member shall have the same duties and obligations as a funding portal member under the Funding Portal Rules. For purposes of Section 1(a) of Article III of the FINRA By-Laws, a registered broker or dealer shall include a registered funding portal.

The terms used in the Funding Portal Rules, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws, unless a term is defined differently in a Funding Portal Rule, or unless the context of the term within a Funding Portal Rule requires a different meaning.

(b) Definitions

When used in the Funding Portal Rules, unless the context otherwise requires:

(1) “Associated person of a funding portal member” or “person associated with a funding portal member”

The term “associated person of a funding portal member” or “person associated with a funding portal member” means 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.

(2) “By-Laws”

The term “By-Laws” means the By-Laws of the Corporation or the FINRA By-Laws.

(3) “Exchange Act” or “SEA”

The term “Exchange Act” or “SEA” means the Securities Exchange Act of 1934, as amended.

(4) “FINRA”

The term “FINRA” means, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.

(5) “Funding Portal”

The term “funding portal” shall be as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

(6) “Funding Portal Member”

The term “funding portal member” means any funding portal admitted to membership in FINRA.

(7) “Funding Portal Rules”

The term “Funding Portal Rules” means Funding Portal Rules 100 through 1200.

(8) “Investor”

The term “investor” does not include a broker, dealer or funding portal.

(9) “Person”

The term “person” includes any natural person, partnership, corporation, association, or other legal entity (provided, however, that for purposes of paragraph (b)(1) of this Rule the term “person” shall solely include a natural person).

(10) “SEC”

The term “SEC” means the Securities and Exchange Commission.

(11) “Securities Act”

The term “Securities Act” means the Securities Act of 1933, as amended.

110. Funding Portal Application

(a) Member Application Process

(1) Definitions

(A) “Associated Person”

Solely for purposes of paragraph (a) of this Rule, the term “associated person” means 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).

(B) “FP Applicant”

The term “FP Applicant” means a person that applies for admission to FINRA as a funding portal member under paragraph (a)(3) of this Rule or a funding portal member that files an application for approval of a change in ownership or control under paragraph (a)(4) of this Rule.

(C) “Day”

The term “day” means calendar day. Solely for purposes of paragraph (a) of this Rule, in calculating a period of time, the day of the act (e.g., filing of application, service of notice) from which the period of time designated begins to run shall not be included; provided, however, that where the last day of a period so calculated is a Saturday, Sunday or

day on which FINRA is otherwise closed, the period shall run until the end of the next business day.

(D) “Department”

The term “Department” means the Department of Member Regulation of FINRA.

(E) “District”

The term “district” means a district established by the FINRA Regulation Board.

(2) Service or Filing Date

(A) FINRA shall serve a notice or decision issued under paragraph (a) of this Rule by electronic delivery.

(B) For purposes of paragraph (a) of this Rule, service by FINRA or filing by an FP Applicant shall be deemed complete on the date recorded by FINRA’s electronic systems for electronic communications or by other means of verification prescribed by FINRA.

(3) Application to be a Funding Portal Member

(A) An FP Applicant for FINRA membership shall submit its application to the Department by filing a Form FP-NMA in the manner prescribed by FINRA and an application fee.

(B) At the time an FP Applicant for FINRA membership submits its application pursuant to paragraph (a)(3)(A) of this Rule, the FP Applicant must submit information, in a format to be prescribed by FINRA, indicating whether the FP Applicant or any associated person (as

defined in Funding Portal Rule 100(b)(1)) of the FP Applicant is subject to an event described in Section 3(a)(39) of the Exchange Act. The FP Applicant must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

(4) Application for Approval of a Change in Ownership or Control

(A) A funding portal member shall file an application for prior approval of any change:

(i) in the equity ownership or partnership capital, LLC membership interest, or other ownership interest of the funding portal member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital, LLC membership interest, or other ownership interest; or

(ii) of control persons of the funding portal member, other than the appointment or election of a natural person as an officer or director of the funding portal member in the normal course of business, regardless of whether such change occurred as a result of a direct or indirect change in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the funding portal member.

(B) A funding portal member shall submit its application for prior approval of any of the changes described in paragraph (a)(4)(A) of this

Rule to the Department by filing a Form FP-CMA in the manner prescribed by FINRA and an application fee.

(5) Rejection of Application That Is Not Complete

If the Department determines within 14 days after the filing of an application pursuant to paragraphs (a)(3) or (a)(4) of this Rule that the application is not complete, the Department shall reject the application and deem it not to have been filed. In such case, within the 14 day period, the Department shall serve a written notice on the FP Applicant of the Department's determination and the reasons therefor. FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. If the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant shall submit a new application and fee under Funding Portal Rule 110(a).

(6) Request For Additional Documents Or Information

Within 14 days after the filing of an application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application, and the FP Applicant shall file any additional information and documents with the Department within 14 days after service of the Department's initial request. The Department may serve subsequent requests for additional information or documents at any time during the membership application process. Unless otherwise agreed by the Department and the FP

Applicant, the FP Applicant shall file any additional information and documents with the Department within seven days after service of any subsequent request.

(7) Withdrawal of Application

If an FP Applicant withdraws an application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule within 14 days after filing the application, FINRA shall refund the application fee, less a processing fee which shall be retained by FINRA. If the FP Applicant determines to again seek funding portal membership or approval of a change in ownership or control, the FP Applicant shall submit a new application and fee pursuant to paragraphs (a)(3) or (a)(4) of this Rule.

(8) Lapse of Application

(A) Absent a showing of good cause, an application filed under paragraphs (a)(3) or (a)(4) of this Rule shall lapse if an FP Applicant fails to:

(i) respond fully within 14 days after service of an initial written request, or within seven days after service of a subsequent written request, for information or documents under paragraph (a)(6) of this Rule, or within such other time period agreed to by the Department and the FP Applicant;

(ii) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (a)(9) of this Rule; or

(iii) file an executed membership agreement under paragraph (a)(11) of this Rule within seven days after service of

the agreement, or within such other period agreed to by the Department and the FP Applicant.

(B) If an FP Applicant wishes to again seek membership or approval of a change in ownership or control subsequent to the lapse of an application pursuant to paragraph (a)(8)(A) of this Rule, then the FP Applicant shall be required to submit a new application in the manner prescribed in paragraph (a)(3) or (a)(4) of this Rule, respectively, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws. FINRA shall not refund any fee for a lapsed application.

(9) Membership Interview

(A) Requirement for an Interview

Before the Department serves its decision on an application for new membership in FINRA, the Department shall conduct one or more membership interviews with a representative or representatives of the FP Applicant. The membership interview(s) may be conducted by video conference or such other means as FINRA may specify.

(B) Service of Notice

At least five days before a membership interview, the Department shall serve on the FP Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the FP Applicant who are required to participate in the interview. The Department shall serve the notice in a manner consistent with paragraph (a)(2) of this Rule. The FP Applicant and the Department may agree to a

shorter or longer period for notice or a different method of service under this subparagraph.

(C) Time

Unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 30 days after the filing of an application or within 14 days after the filing of all additional information or documents requested, whichever is later.

(10) Standards for Granting or Denying Application

After considering an application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule, other information and documents provided by the FP Applicant during the application process, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the FP Applicant meets each of the following standards, as applicable:

(A) The FP Applicant and its associated persons are capable of complying with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration all information in its possession, including information regarding whether an FP Applicant or its associated persons:

(i) is subject to an event described in Section 3(a)(39) of the Exchange Act; and

(ii) is the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea of an FP Applicant or its associated persons.

(B) The FP Applicant has established all contractual or other arrangements and business relationships with banks, broker-dealers, clearing corporations, service bureaus, escrow agents, transfer agents, technology service providers, or others necessary to initiate the operations described in the FP Applicant's Form FP-NMA.

(C) The FP Applicant has a supervisory system that is reasonably designed to achieve compliance with applicable federal securities laws, the rules and regulations thereunder, and the Funding Portal Rules.

(D) The FP Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.

(E) The FP Applicant has a recordkeeping system that enables the FP Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements.

(11) Granting or Denying Application

(A) If the Department determines that the FP Applicant meets each of the applicable standards in paragraph (a)(10) of this Rule, the Department shall grant the application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule. The FP Applicant's approval for membership shall be contingent upon the FP Applicant's filing of an executed written membership agreement.

(B) If the Department determines that the FP Applicant does not meet one or more of the applicable standards in paragraph (a)(10) of this Rule, the Department shall deny the application.

(12) Decision

The Department shall serve a written decision on the application filed pursuant to paragraphs (a)(3) or (a)(4) of this Rule within 60 days after the filing of the application or such later date as the Department and the FP Applicant have agreed in writing. If the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a)(10) of this Rule. A decision that denies the application shall become effective upon service. The Department shall serve its decision and, as applicable, the membership agreement on the FP Applicant in accordance with paragraph (a)(2) of this Rule.

(13) Appeal of Department's Decision

(A) Request for Review; Final Action

(i) Within 14 days after service of a decision under paragraph (a)(12) of this Rule, an FP Applicant may file a written

request for review with the National Adjudicatory Council. A request for review shall state with specificity why the FP Applicant believes that the Department's decision is inconsistent with the applicable standards set forth in paragraph (a)(10) of this Rule or otherwise should be set aside, and state whether a hearing is requested. An FP Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Adjudicatory Council.

(ii) If the FP Applicant does not file a request for a review, abandons its appeal or withdraws its notice of appeal, the Department's decision shall constitute final action by FINRA.

(B) Transmission of Documents

Within 14 days after the filing of a request for review, the Department shall: transmit to the National Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and serve on the FP Applicant a copy of such documents (other than those documents originally submitted by the FP Applicant) and a copy of the index.

(C) Appointment of Subcommittee

The National Adjudicatory Council or the Review Subcommittee as defined in FINRA Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or

more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.

(D) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the FP Applicant or the Department in connection with the request for review.

(E) Hearing

(i) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the National Adjudicatory Council or service of the notice by the Subcommittee. The National Adjudicatory Council shall serve written notice of the date and time of the hearing to the FP Applicant by email, facsimile or overnight courier not later than 14 days before the hearing.

(ii) Counsel

The FP Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(iii) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the FP Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. If the FP Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(iv) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The FP Applicant, the Department, or a witness may seek to correct the transcript. Upon notice to the FP Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(F) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the FP Applicant or the Department to file additional information or briefs. Any additional

information or brief filed shall be provided to all parties before the National Adjudicatory Council renders its decision.

(G) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council within 60 days after the date of the hearing held pursuant to subparagraph (E).

(H) Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions.

(I) Discretionary Review by the FINRA Board

(i) The National Adjudicatory Council shall provide a copy of its decision to the Board. Alternatively, the National Adjudicatory Council may remand the membership proceeding with instructions. If the Board does not call the decision for review under paragraph (a)(13)(I)(ii) of this Rule, the National Adjudicatory Council shall issue the written decision after the expiration of the Board call for review period, and the decision shall constitute final FINRA action.

(ii) A Governor may call a membership proceeding for review by the Board at the next meeting of the Board that is at least 15 days after the date on which the Board received the decision. If

a call for review is made, the Board shall review the membership proceeding not later than the next meeting of the Board. The Board shall issue a written decision affirming, modifying or reversing the National Adjudicatory Council's decision and setting forth its findings and conclusions. Alternatively, the Board may remand the membership proceeding with instructions. The decision shall constitute final FINRA action, unless the Board remands the membership proceeding.

(14) Application to the SEC for Review

A person aggrieved by final action of FINRA under paragraph (a) of this Rule may apply for review by the SEC pursuant to Section 19(d)(2) of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the SEC otherwise orders.

(15) Filing of Misleading Information as to Membership or Registration

No funding portal member or person associated with a funding portal member shall file with FINRA information with respect to membership or registration that is incomplete or inaccurate so as to be misleading, or that could in any way tend to mislead, or shall fail to correct such filing after notice thereof.

200. Funding Portal Conduct

(a) Standards of Commercial Honor and Principles of Trade

A funding portal member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

(b) Use of Manipulative, Deceptive or Other Fraudulent Devices

No funding portal member shall effect any transaction in, or induce the purchase or sale of, any security by means of, or by aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance.

(c) Communications with the Public

(1) Definition of “Funding Portal Communication”

For purposes of this Rule, the term “funding portal communication” means any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.

(2) Content Standards

(A) No funding portal communication may:

(i) include any false, exaggerated, unwarranted, promissory or misleading statement or claim;

(ii) omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading;

(iii) state or imply that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the funding portal member’s business practices; or

(iv) predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment.

(B) All funding portal member communications must be based on principles of fair dealing and good faith and must be fair and balanced.

(C) All funding portal member communications must prominently disclose the name of the funding portal member, or the name under which the funding portal member primarily conducts business as disclosed on the member's Form FP-NMA.

(3) Issuer Communications

The content standards of paragraphs (c)(2)(A) and (B) of this Rule shall not apply to any communication on the funding portal member's website that is prepared solely by an issuer; provided, however, that no funding portal member may include on its website any issuer communication that the funding portal member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

300. Funding Portal Compliance

(a) Supervisory System

(1) Each funding portal member shall establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws

and regulations, and with the Funding Portal Rules. A funding portal member's supervisory system shall provide, at a minimum, for the following:

(A) the establishment and maintenance of written procedures to supervise the activities of the funding portal and its associated persons;

(B) the designation of a person with authority to carry out the supervisory responsibilities of the funding portal member; and

(C) reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

(2) A funding portal member shall permit the examination and inspection of all of its business and business operations that relate to its activities as a funding portal, such as its premises, systems, platforms and records, by representatives of FINRA and the Commission, and shall cooperate with the examination, inspection or investigation of any persons directly or indirectly using its platform.

(b) Executive Representative

Each funding portal member shall designate to FINRA, for purposes of Article IV, Section 3 of the FINRA By-Laws, an executive representative. Each funding portal member shall update its executive representative designation in the manner prescribed by Funding Portal Rule 300(d).

(c) Reporting Requirements

(1) Each funding portal member shall promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the member knows or should have known of the existence of any of the following:

(A) the funding portal member or an associated person of the funding portal member:

(i) is named as a defendant or respondent in any regulatory proceeding, whether foreign or domestic, involving an alleged violation of any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations, standards of conduct or by-laws, or has been found by a regulatory body or self-regulatory organization, whether foreign or domestic, to have violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct;

(ii) is the subject of any written complaint involving allegations of fraudulent conduct or misuse or misappropriation of funds or assets;

(iii) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities-, insurance-, commodities-, financial- or investment-related regulatory body or self-regulatory organization, whether foreign or domestic, or is denied membership or continued membership in any such self-regulatory organization; or is barred

from becoming associated with any member of any such self-regulatory organization;

(iv) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false 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, or substantially equivalent activity in a domestic, military or foreign court;

(v) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, funding portal, underwriter or insurance company that was suspended, expelled or had its registration denied or revoked by any regulatory body, jurisdiction or organization, whether foreign or domestic, or is associated in such a capacity with a bank, trust company or other financial institution that was convicted of or pleaded no contest to, any felony or misdemeanor in a foreign or domestic court;

(vi) is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or

arbitration, or is the subject of any claim for damages by an investor, broker, dealer or funding portal member that relates to the provision of financial services or relates to a financial transaction, and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding \$15,000. However, when the funding portal member is the defendant or respondent or is the subject of any claim for damages by an investor, broker, dealer or funding portal member, then the reporting to FINRA shall be required only when such judgment, award or settlement is for an amount exceeding \$25,000;

(vii) is, or is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a “statutory disqualification” as that term is defined in the Exchange Act, provided, however, that this requirement shall not apply to activities with a member or an associated person that has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to be a member or to be associated with a member. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification; or

(B) an associated person of the funding portal member is the subject of any disciplinary action taken by the funding portal member involving suspension, termination, the withholding of compensation or of any other remuneration in excess of \$2,500, the imposition of fines in excess of \$2,500 or is otherwise disciplined in any manner that would have a significant limitation on the individual's activities on a temporary or permanent basis.

(2) Each funding portal member shall promptly report to FINRA, within 30 calendar days, through such means as FINRA may specify, after the funding portal member has concluded or reasonably should have concluded that an associated person of the funding portal member or the funding portal member itself has violated any securities-, commodities-, financial-or investment-related laws, rules, regulations or standards of conduct of any foreign or domestic regulatory body or self-regulatory organization.

(3) Each person associated with a funding portal member shall promptly report to the funding portal member the existence of any of the events set forth in paragraph (c)(1)(A) of this Rule.

(4) Nothing contained in this Rule shall eliminate, reduce or otherwise abrogate the responsibilities of a funding portal member to promptly disclose required information on SEC Form Funding Portal as applicable, to make any other required filings or to respond to FINRA with respect to any investor complaint, examination or inquiry. In addition, a member need not report an event otherwise required to be reported under paragraph (c)(1)(A) of this Rule if

the member discloses the event on the SEC Form Funding Portal, consistent with the requirements of that form, or as required pursuant to Funding Portal Rule 800(b)(2).

(5) For purposes of this Rule, Supplementary Material .01 through .07, .09 and .10 of FINRA Rule 4530 (the “Supplementary Material”) shall apply, provided, however, that, as the context requires:

(A) the term “member” as used in the Supplementary Material shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(B) the term “associated person” as used in the Supplementary Material shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(C) Supplementary Material .01 shall apply to paragraphs (c)(1)(B) and (c)(2) of this Rule;

(D) Supplementary Material .02 and .03 shall apply to paragraphs (c)(1)(A)(i) and (c)(2) of this Rule;

(E) Supplementary Material .05 and .07 shall apply to paragraphs (c)(1) and (c)(2) of this Rule;

(F) Supplementary Material .06 shall apply to paragraph (c)(1)(A)(vi) of this Rule; and

(G) Supplementary Material .10 shall apply to paragraphs (c)(1)(A)(i) and (c)(1)(A)(iii) of this Rule.

(d) Contact Information Requirements

(1) Each funding portal member shall report to FINRA all contact information required by FINRA through such means as FINRA may specify.

(2) Each funding portal member shall promptly update its required contact information (including its executive representative designation and contact information as required by Article IV, Section 3 of the FINRA By-Laws), but in any event not later than 30 days following any change in such information.

In addition, each member shall review and, if necessary, update its required contact information, through such means as FINRA may specify, within 17 business days after the end of each calendar year.

(3) Each funding portal member shall comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

(e) Statement of Gross Revenue

Each funding portal member shall each year report to FINRA, in the manner prescribed by FINRA, the member's gross revenue on Form FP-Statement of Revenue, no later than 60 calendar days following each calendar year-end. The statement of gross revenue shall be prepared in accordance with U.S. Generally Accepted Accounting Principles.

(f) Record of Associated Persons of the Funding Portal Member

Each funding portal member shall make and keep current a record listing every associated person of the funding portal member that shows, for each such associated person, every office of the funding portal member where the associated person regularly

conducts any business for the funding portal member, and any registration number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member. A funding portal member shall preserve all records made pursuant to this rule for five years, the first two in an easily accessible place.

800. Investigations and Sanctions

(a) Application of FINRA Rule 8000 Series (Investigations and Sanctions) to Funding Portals

Except for FINRA Rules 8110, 8211, 8213 and 8312, all funding portal members shall be subject to the FINRA Rule 8000 Series, unless the context requires otherwise, provided, however, that:

(1) the term “member” as used in the FINRA Rule 8000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(2) the term “associated person” as used in the FINRA Rule 8000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 8000 Series shall include the Funding Portal Rules;

(4) for purposes of FINRA Rule 8210(d):

(A) a notice under FINRA Rule 8210 shall be deemed received by the funding portal member to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the funding

portal member as reflected in the SEC Form Funding Portal. With respect to a person who is currently associated with a funding portal member, a notice under FINRA Rule 8210 shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the funding portal member as reflected in the SEC Form Funding Portal. With respect to a person subject to FINRA's jurisdiction who was formerly associated with a funding portal member, a notice under FINRA Rule 8210 shall be deemed received by the person upon personal service, as set forth in FINRA Rule 9134(a)(1). If the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person currently associated with the funding portal member has actual knowledge that the funding portal member's address in the SEC Form Funding Portal is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(i) the last known business address of the funding portal member as reflected in the SEC Form Funding Portal; and

(ii) any other more current address of the funding portal member or the person currently associated with the funding portal member known to the Adjudicator or FINRA staff who is responsible for mailing or otherwise transmitting the notice; and

(B) if the Adjudicator or FINRA staff responsible for mailing or otherwise transmitting the notice to the funding portal member or person

knows that the funding portal member or person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the funding portal member or person, and any notice served upon counsel shall be deemed received by the funding portal member or person.

(b) Public Disclosure of Information on Funding Portals

(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 SEC Regulation Crowdfunding, in the form made publicly available by the SEC, or, with respect to a former funding portal member, the former funding portal member's most recent SEC Form Funding Portal, and any amendments and registration withdrawal requests, as filed with the SEC.

(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 Exchange Act. The funding portal member must keep this information current and must update such information promptly, but in any event not later than 10 days following any change in such information.

(3) With respect to the information filed with FINRA pursuant to paragraph (b)(2) of this Rule, FINRA shall not make available information

reported as a Social Security number, information that FINRA is otherwise prohibited from releasing under federal law, or information that is provided solely for use by FINRA. FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns or information that was reported in error by a funding portal member.

900. Code of Procedure

(a) Application of FINRA Rule 9000 Series (Code of Procedure) to Funding Portals

Except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series, all funding portal members shall be subject to the FINRA Rule 9000 Series, unless the context requires otherwise, provided, however, that:

(1) the term “member” as used in the FINRA Rule 9000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(2) the term “associated person” as used in the FINRA Rule 9000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 9000 Series shall include the Funding Portal Rules;

(4) for purposes of FINRA Rule 9217, a funding portal member may be subject to a fine under FINRA Rule 9216(b) with respect to any of the following:

(A) failure to timely submit amendments to SEC Form Funding Portal;

(B) Funding Portal Rule 200(c) (Communications with the Public);

(C) Funding Portal Rule 300(a) – Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217;

(D) Funding Portal Rule 300(c) – failure to timely file reports;

(E) failure to provide or update contact information as required by Funding Portal Rule 300(d);

(F) Rule 303(f) of SEC Regulation Crowdfunding – Confirmation of Transactions; and

(G) Rule 404 of SEC Regulation Crowdfunding – failure to make and preserve records in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Funding Portal Rules;

(5) for purposes of FINRA Rules 9134(b)(1) and 9134(b)(2), the residential or business address, as applicable, as reflected in SEC Form Funding Portal, in lieu of the Central Registration Depository, shall be acceptable;

(6) for purposes of FINRA Rule 9134(b)(2), service on a contact employee, or United States agent for service of process, as set forth in SEC Form Funding Portal, in lieu of Form BD, shall be acceptable;

(7) for purposes of FINRA Rule 9551(a), FINRA staff may issue a written notice requiring a funding portal member to file communications with the FINRA Advertising Regulation Department at least ten days prior to use if FINRA staff determines that the member has departed from the standards of Funding Portal Rule 200(c);

(8) for purposes of FINRA Rule 9551(d), the pre-use filing requirement referenced in a notice issued and served under FINRA Rule 9551 shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to FINRA Rule 9559;

(9) for purposes of proceedings pursuant to FINRA Rule 9810(a), proceedings may be initiated with respect to alleged violations of Section 10(b) of the Exchange Act and SEA Rule 10b-5, Funding Portal Rule 200(a) (if the alleged violation is misuse of investor funds or assets, or based on violations of Section 17(a) of the Securities Act) and Funding Portal Rule 200(b).

(b) Eligibility Proceedings

(1) Purpose

Funding Portal Rule 900(b) sets forth procedures for a person to become or remain associated with a funding portal member, notwithstanding the existence of a statutory disqualification as defined in Article III, Section 4 of the FINRA By-Laws and for a funding portal member or person associated with a funding

portal member to obtain relief from the eligibility or qualification requirements of the FINRA By-Laws and Funding Portal Rules. Such actions hereinafter are referred to as “eligibility proceedings.”

(2) Definitions

(A) The term “Application” means FINRA’s Form MC-400 for individuals or Form MC-400A for funding portal members, filed with the Department of Registration and Disclosure (“RAD”).

(B) The term “disqualified funding portal member” means a funding portal member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the FINRA By-Laws.

(C) The term “disqualified person” means an associated person of a funding portal member or person seeking to become an associated person of a funding portal member who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 3 of the FINRA By-Laws.

(D) The term “sponsoring funding portal member” means the funding portal member or applicant for membership pursuant to Funding Portal Rule 110(a) that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

(3) Initiation of Eligibility Proceeding; Department of Member Regulation Consideration

(A) Initiation by FINRA

(i) Issuance of Notice of Disqualification or Ineligibility

If FINRA staff has reason to believe that a disqualification exists or that a funding portal member or person associated with a funding portal member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a). The notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to funding portal members or applicants for funding portal membership when no Application is required pursuant to Funding Portal Rule 900(b)(7).

(ii) Notice Regarding a Funding Portal Member

A notice issued to a disqualified funding portal member shall state that the disqualified funding portal member may apply for relief by filing an Application or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. If the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the membership of the funding portal member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

(iii) Notice Regarding an Associated Person

A notice issued regarding a disqualified person to a funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) shall state that such funding portal member or applicant for funding portal membership may file an Application on behalf of itself and such person or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written request for relief, within 10 business days after service of the notice. If the funding portal member fails to file the Application or, where appropriate, the written request for relief, within the 10-day period, the funding portal member may not associate or continue to associate with the disqualified person, unless the Department of Member Regulation grants an extension for good cause shown.

(iv) Service

A notice issued under this paragraph (b)(3)(A) shall be served by facsimile or electronic mail, or pursuant to FINRA Rules 9131 and 9134, as adopted pursuant to Funding Portal Rule 900(a).

(4) Obligation of Funding Portal Member to Initiate Eligibility

Proceeding

(A) A funding portal member shall file an Application or, in the case of a matter set forth in Funding Portal Rule 900(b)(8)(A) a written

request for relief, with RAD, if the funding portal member determines prior to receiving a notice under paragraph (b)(3)(A) of this Rule that:

(i) It has become a disqualified funding portal member;

(ii) A person associated with such funding portal member or whose association is proposed by an applicant for funding portal membership under Funding Portal Rule 110(a) has become a disqualified person; or

(iii) The funding portal member or applicant for funding portal membership under Funding Portal Rule 110(a) wishes to sponsor the association of a person who is a disqualified person.

(5) Withdrawal of Application or Written Request for Relief

A funding portal member may withdraw its Application or, as set forth in Funding Portal Rule 900(b)(8)(A) its written request for relief, at any time prior to an appeal by filing a written notice with the Department of Member Regulation and RAD pursuant to FINRA Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a). A funding portal member may withdraw its Application after the start of an appeal but prior to the issuance of a decision by the National Adjudicatory Council by filing a written notice with the Department of Member Regulation and the Office of General Counsel pursuant to FINRA Rules 9135, 9136, and 9137, as adopted pursuant to Funding Portal Rule 900(a).

(6) Ex Parte Communications

The prohibitions against ex parte communications set forth in FINRA Rule 9143, as adopted pursuant to Funding Portal Rule 900(a), shall become effective

under Funding Portal Rule 900(b) when FINRA staff has initiated the eligibility proceeding and FINRA staff has knowledge that a funding portal member intends to file an Application or written request for relief pursuant to Funding Portal Rule 900(b).

(7) Relief from Eligibility Proceedings

A funding portal member is not required to file an Application if:

(A) The disqualification arises solely from findings in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, the Commodity Futures Trading Commission or a self-regulatory organization, and the sanction is no longer in effect.

(B) The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(i), and the bar is no longer in effect, provided that there is no final order specified in Exchange Act Section 15(b)(4)(H)(ii), in which case paragraph (b)(7)(C) of this Rule applies.

(C) The disqualification arises solely from a final order specified in Exchange Act Section 15(b)(4)(H)(ii), and:

(i) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect; or

(ii) the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered 10 or more years ago.

(D) The disqualification arises solely under Exchange Act Section 3(a)(39)(E), and the disqualified funding portal member or person is subject to the disqualification solely because the member or person has associated with it any person who is known, or in the exercise of reasonable care should be known, to the disqualified member or person to be a person described by subparagraph (A), (B), (C), or (D) of Exchange Act Section 3(a)(39), unless the associated person controls such disqualified member or person, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member.

(8) Matters That May Be Approved After the Filing of an Application or Written Request for Relief

(A) The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified funding portal member or a sponsoring funding portal member without the filing of an Application by such disqualified funding portal member or sponsoring funding portal member if a disqualified funding portal member or disqualified person is subject to one or more of the following conditions, but is not otherwise subject to disqualification:

(i) an injunction as described in Section 15(b)(4)(C) of the Exchange Act that was entered ten or more years prior to the proposed admission or continuance; or

(ii) a request to change the supervisor of a disqualified person.

(B) The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve, upon the filing of an Application by a disqualified funding portal member or a sponsoring funding portal member and written consent to a heightened supervisory plan, all Applications seeking relief from disqualifications arising under Section 3(a)(39) of the Exchange Act.

(i) By the submission of a written consent to a heightened supervisory plan, the disqualified funding portal member, sponsoring funding portal member and disqualified person waive:

a. the right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

b. any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim bias or prejudice by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member

Regulation's approval or the supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan; and

c. any right of the disqualified funding portal member, sponsoring funding portal member, and disqualified person to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, as adopted pursuant to Funding Portal Rule 900(a), in connection with such person's or body's participation in discussions regarding the terms and conditions of the approval or supervisory plan, or other consideration of the approval or supervisory plan, including acceptance or rejection of such approval or supervisory plan.

(ii) If the heightened supervisory plan is rejected, the disqualified funding portal member, sponsoring funding portal member, or disqualified person shall be bound by the waivers made under paragraph (b)(8)(B)(i) of this Rule for conduct by persons or bodies occurring during the period beginning on the date the heightened supervisory plan was submitted and ending upon the rejection of the heightened supervisory plan and shall

have the right to appeal such decision pursuant to Funding Portal Rule 900(b)(11).

(9) Department of Member Regulation Consideration of Applications for New Funding Portal Members

In all instances where FINRA receives a Form MC-400 or Form MC-400A under this Rule, and such Application is submitted on behalf of an applicant for membership as a funding portal member under Funding Portal Rule 110(a), the Department of Member Regulation shall defer a decision on such Form MC-400 or Form MC-400A until such time as FINRA has issued a determination on the application submitted pursuant to Funding Portal Rule 110(a).

(10) Rights of Disqualified Funding Portal Member, Sponsoring Funding Portal Member, Disqualified Person, and Department of Member Regulation

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to Funding Portal Rule 900(b)(8)(A), the disqualified funding portal member or sponsoring funding portal member may file an Application under Funding Portal Rule 900(b)(8)(B). The Department of Member Regulation may require a disqualified funding portal member or sponsoring funding portal member to file an Application with RAD, notwithstanding the provisions of Funding Portal Rule 900(b)(8)(A).

(B) In the event the Department of Member Regulation does not approve an Application pursuant to Funding Portal Rule 900(b)(8)(B), the

Department of Member Regulation shall inform the disqualified funding portal member or sponsoring funding portal member of its decision in writing. The decision shall explain in detail the reason for denial. The disqualified funding portal member or sponsoring funding portal member shall have the right to appeal such decision pursuant to Funding Portal Rule 900(b)(11). If not timely appealed pursuant to Funding Portal Rule 900(b)(11), the decision issued by the Department of Member Regulation shall constitute final action of FINRA and shall become effective immediately.

(11) Appeal of Department of Member Regulation's Decision to Deny an Application or a Written Request for Relief

(A) Notice

A funding portal member or sponsoring funding portal member may file a written notice of appeal within 14 days after service of a decision issued under Funding Portal Rule 900(b). The notice of appeal shall be filed with the Office of General Counsel, with a copy to the Department of Member Regulation. The notice of appeal shall state with specificity why the appellant believes the Department of Member Regulation's decision is not consistent with the public interest or should otherwise be set aside, and shall state whether a hearing is requested. The notice of appeal shall be signed by the appellant.

(B) Stay of Decision

An appeal of the Department of Member Regulation's decision to deny an Application or a written request for relief shall operate as a stay of that decision while the appeal is pending.

(C) Subcommittee

After an appellant files a timely appeal, the National Adjudicatory Council or the Statutory Disqualification Committee shall appoint two or more members, who shall be current or former members of the National Adjudicatory Council, Statutory Disqualification Committee, or former Directors or Governors, to form a subcommittee. The subcommittee shall conduct a hearing when one is requested, review the appeal, and recommend a decision to the Statutory Disqualification Committee.

(D) Notice of Hearing and Rights of Parties at Hearing

If a hearing is requested, the hearing shall be held no later than 90 days after the filing of a notice of appeal unless the subcommittee determines that there is good cause shown for extending the time period. The appellant and the Department of Member Regulation shall be notified via mail, email, facsimile, or overnight courier of the location, time, and date of the hearing not less than 14 business days before the hearing, unless the parties agree to shorten the time period or where good cause has been shown for an expedited proceeding under paragraph (b)(11)(F) of this Rule. The appellant and the Department of Member Regulation shall be entitled to be heard in person at a hearing, to be represented by an attorney, and to submit any relevant evidence.

(E) Withdrawal or Abandonment

If an appellant abandons or withdraws the Application, the Department of Member Regulation's decision shall constitute final action by FINRA.

(F) Expedited Review

Where the failure to promptly review a decision to deny an Application would unduly or unfairly harm the funding portal member or sponsoring funding portal member, the subcommittee shall provide an expedited hearing upon a showing of good cause.

(G) Transmission of Documents

(i) Within 14 days after the filing of a notice of appeal, the Department of Member Regulation shall transmit to the Office of General Counsel, and serve on the appellant to the extent that any such documents have not been previously provided, copies of all documents that were considered in connection with the Department of Member Regulation's decision to deny the Application and an index to the documents.

(ii) Not less than 10 business days before the hearing, the Department of Member Regulation and the appellant shall serve proposed exhibit and witness lists on each other and the Office of General Counsel. The exhibit and witness lists shall be served by email, facsimile or overnight courier.

(iii) At any time prior to the issuance of its recommendation, the subcommittee may order the parties to supplement the record with any additional information that the subcommittee deems necessary. The subcommittee may also order the appellant and the Department of Member Regulation to file legal briefs.

(H) Extensions of Time, Postponements, and Adjournments

The subcommittee may shorten any time limits prescribed by these rules for the filing of any papers after obtaining consent of all the parties, and may postpone or adjourn any hearing. The subcommittee may extend any time limits prescribed by these rules for the filing of any papers.

(I) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter.

(J) Record

The record shall consist of:

- (i) the decision issued under Funding Portal Rule 900(b);
- (ii) all documents relied upon in issuing the decision issued under Funding Portal Rule 900(b);
- (iii) the notice of appeal;
- (iv) any other submissions by the appellant and the Department of Member Regulation;
- (v) any evidence considered at the hearing; and

(vi) the transcript of the hearing and any corrections thereto.

(K) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the Office of General Counsel, as custodian of the record, until the date when FINRA's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(L) Recommendation

On the basis of the record, the subcommittee shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the subcommittee, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council.

(M) Decision

After considering all the matters presented in the request for relief, the Statutory Disqualification Committee's recommendation, the public interest and the protection of investors, the National Adjudicatory Council may affirm, modify, or reverse in writing the Department of Member Regulation's decision. The National Adjudicatory Council shall provide its proposed decision to the FINRA Board. If the FINRA Board does not call the decision for review, the decision shall be served pursuant to

Funding Portal Rule 900(b)(3)(A)(iv) and shall constitute final action of FINRA. A decision to affirm the Department of Member Regulation's decision shall be effective immediately. A decision to approve the Application shall be effective after the SEC issues an order or acknowledgement letter, as the case may be.

(12) Discretionary Review by the FINRA Board

(A) Call for Review by the FINRA Board

A Governor may call a proposed National Adjudicatory Council decision regarding an eligibility proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b)(12)(B) of this Rule.

(B) 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the FINRA Board that is at least 15 days after the date on which the FINRA Board receives the proposed written decision of the National Adjudicatory Council. By a unanimous vote of the FINRA Board, the FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the FINRA Board then in office, the FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

(C) Review at Next Meeting

If a Governor calls an eligibility proceeding for review within the period prescribed in paragraph (b)(12)(B) of this Rule, the FINRA Board

shall review the eligibility proceeding not later than the next meeting of the FINRA Board. The FINRA Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(D) Decision of FINRA Board, Including Remand

After review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council.

Alternatively, the FINRA Board may remand the eligibility proceeding with instructions.

(E) Issuance of Decision

The FINRA Board shall issue and serve its written decision on the disqualified funding portal member, sponsoring funding portal member, or disqualified person, and the Department of Member Regulation pursuant to FINRA Rules 9132 and 9134, as adopted pursuant to Funding Portal Rule 900(a). The decision shall constitute the final action of FINRA, unless the FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the SEC issues an acknowledgment letter or, in cases involving SEC-ordered sanctions, an order.

(13) Application to SEC for Review

The right to have any action taken pursuant to this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of final action by FINRA, unless the SEC otherwise orders.

1200. Arbitration and Mediation

(a) Application of FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes), FINRA Rule 13000 Series (Code of Arbitration Procedure for Industry Disputes) and FINRA Rule 14000 Series (Code of Mediation Procedure) to Funding Portals

All funding portal members shall be subject to the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series, unless the context requires otherwise, provided, however, that:

(1) the term “member” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “funding portal member” as defined pursuant to Funding Portal Rule 100(b)(6);

(2) the term “associated person” as used in the FINRA Rule 12000 Series, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall mean “associated person of a funding portal member” or “person associated with a funding portal member” as defined pursuant to Funding Portal Rule 100(b)(1);

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include the Funding Portal Rules; and

(4) the term “customer” as used in the FINRA Rule 12000, FINRA Rule 13000 Series and FINRA Rule 14000 Series shall include investors as such term is used throughout the Funding Portal Rules.

(b) Predispute Arbitration Agreements for Investor Accounts

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form:

“This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party’s ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(E) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.”

(2) (A) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) Within 30 days of signing, a copy of the agreement containing any such clause shall be given to the investor and the funding portal member shall retain proof of delivery or of the investor’s acknowledgement of receipt.

(3) (A) Within ten business days of receipt of the investor’s request, a funding portal member shall provide an investor with a copy of any predispute arbitration clause or investor agreement executed between the investor and the funding portal member.

(B) Upon request by an investor, a funding portal member shall provide the investor with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) No predispute arbitration agreement shall include any condition that:

(A) limits or contradicts the rules of any self-regulatory organization;

(B) limits the ability of a party to file any claim in arbitration;

(C) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(D) limits the ability of arbitrators to make any award.

(5) If an investor files a complaint in court against a funding portal member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the funding portal member and the investor, the funding portal member may seek to compel arbitration of the claims that are subject to arbitration. If the funding portal member seeks to compel arbitration of such claims, the funding portal member must agree to arbitrate all of the claims contained in the complaint if the investor so requests.

(6) All agreements shall include a statement that “No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the investor is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

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FINRA Rules

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4500. BOOKS, RECORDS AND REPORTS

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4518. Notification to FINRA in Connection with the JOBS Act

A member shall notify FINRA, in a manner prescribed by FINRA:

(a) 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

(b) within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

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