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August 20, 2012

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

RE: Notice to Members 12-34
Proposed FINRA Regulation of Crowdfunding Activities

Dear Ms. Asquith:

Set forth below are limited comments in response to NTM 12-34, which solicits public comment on the appropriate scope of FINRA rules that should apply to member firms engaging in crowdfunding activities, either as funding portals or as brokers. Because I expect that I may provide additional input through Committees of the Business Law Section of the American Bar Association concerning the details of FINRA rules when they are proposed, this letter is restricted to certain comments which I believe may be important to be addressed in advance of the proposed SRO rules. These comments are mine alone and do not reflect any input from other members of the Business Law Section of the American Bar Association or the Securities Laws Committee of the Washington State Bar Association, nor does it constitute the official position of this firm or any of its clients on the subject.

As you know, under the JOBS Act, in crowdfunding offerings a funding portal intermediary may not offer investment advice or recommendations, may not solicit purchases, sales or offers to buy the securities, and may not compensate employees, agents or other persons for such solicitation or based upon the sale of the securities.¹ Nor does the JOBS Act appear to contemplate the types of examinations for the staffs of funding portal intermediaries that are required of registered principals and representatives

¹ JOBS Act, Section 304(b), amending the Securities Exchange Act of 1934 by adding Section 3(a)(80).

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of FINRA members who function as broker-dealers, presumably reflecting these relatively limited functions of funding portal intermediaries in the crowdfunding offering process, and it would thus not seem necessary or appropriate for FINRA to require any such exams of funding portal staffs.

In view of the relatively small size of crowdfunding offerings and the limited staffing resources expected of funding portal intermediaries, it would thus appear inappropriate for FINRA to impose anything like the due diligence investigative obligations upon funding portal intermediaries that are imposed upon broker-dealers in Regulation D offerings by NTM 10-22, and in particular the Reasonable Investigation Practices listed in NTM 10-22.

In this regard, reasonable restraint by FINRA in devising requirements for funding portal intermediaries is necessary in order to prevent the costs to the funding portals (which would be passed on to issuers and indirectly to investors) from undermining the economics of small crowdfunding offerings. Devising such requirements should be capable of being accomplished without compromising investor protection. These comments assume that the SEC will not have imposed different or more stringent requirements on the subject matter than these comments reflect, and if the SEC's enabling regulations should do so, the SEC's regulations would, of course, prevail.

Other than checking through reasonably available commercial data sources to confirm that the crowdfunding issuer is not disqualified from undertaking a crowdfunding offering because of a prior regulatory history and that that issuer is not and has not used the facilities of that same funding portal in a parallel or sequential crowdfunding offering that would result in the offering's exceeding the funding limits for that particular issuer, the funding portal should not be required to undertake any factual verification relating to an issuer or its management raising funds through crowdfunding on that portal. Detailed representations to the portal by the issuer and its management should suffice. In particular, the funding portal should not be required to check other funding portals or broker-dealers to determine whether the same issuer has sought crowdfunding through other venues that would cause it to exceed the 12-months \$1 million funding limit imposed upon issuers under the JOBS Act.

The funding portal should be required to make a cursory review, but not be required to verify the accuracy, completeness or reasonableness, of the issuer's disclosures in the offering to see that the issuer has addressed in some manner each of the areas in which disclosures may be required to be made under SEC implementing regulations.

The funding portal should be required to confirm arrangements for payments by investors to be made electronically directly into a separate trust account at a bank or trust

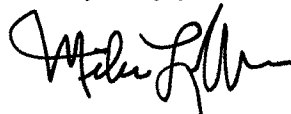
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company and held in escrow until the target offering amount has been reached before being released to the issuer, and the bank or trust company should agree to notify the funding portal upon request of the amount of funds held in the account and of their release to the issuer, or of their return to subscribers if the minimum is not timely reached. As required by the JOBS Act, the escrow agreement should allow investors to cancel their commitments to invest in accordance with SEC enabling regulations. FINRA may wish to provide funding portal members with escrow agreement provisions akin to those of NTM 87-61; however, many of the details of NTM 87-61 would not seem necessary for crowdfunding portals if payments in these small offerings are made electronically directly into the trust account.

Rather than requiring a funding portal to maintain and report upon minimum capital, as would a broker-dealer, the staff of the portal, and perhaps even the portal itself, might be bonded by a responsible surety if that should be deemed required. Because the portal would not hold funds, the amount of the bond would presumably not need to be great in amount. Records of the funding portal and its various crowdfunding offerings might be required to be stored electronically on an ongoing basis (storage fees prepaid) with an established professional electronic data storage company and made available to regulators upon request.

I hope that the above limited comments will prove useful to the FINRA Staff in developing and refining certain of the obligations of funding portal members under Title III of the JOBS Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mike Liles, Jr.", written in a cursive style.

Mike Liles, Jr.