CFIRA
CrowdFund Intermediary Regulatory Advocates

December 3rd, 2012

CrowdFund Intermediary Regulatory Advocates
20-22 W. 12th Street
Cincinnati, OH 45202

Re: FINRA Regulatory Initiatives
JOBS Act Title III: **Registered Portal and Broker-Dealer Operating Mechanics & Working Relationships**

Ladies and Gentlemen:

We are writing to you on behalf of the Crowdfunding Intermediary Regulatory Advocates ("CfIRA"), an association of industry Intermediaries, Investors, Issuers, Third Party Providers and other experts members who are or intend to engage in business under Title III of the JOBS Act signed into law April 5, 2012 (the "Act"). We wish to thank you for meeting with us on Friday, October 12, 2012 to discuss previous comment letters that have been submitted on behalf of CFIRA and a variety of issues related to the implementation of Title III of the Act.

As requested, this letter is written to share CFIRA's views on how Broker-Dealers ("BDs") and Registered Portals ("RPs") will implement Crowdfunding and possibly work cooperatively in this new emerging industry. We use the term "Registered Portal" to represent and acknowledge that funding portals must be duly registered with both the SEC and FINRA.

Broker-Dealers – Inclusion in Existing Business Lines

As defined under the Act, registered and licensed BDs are already considered "funding portals" and thus approved to conduct Crowdfunding. Implicit in the Act is recognition of the fact that BDs already have comprehensive rules, supervisory procedures and guidelines that regulate their existing private placement activity. Since Crowdfunding is a new exemption from the registration requirements of the Securities Act of 1934, the scope of work necessary for a BD to launch a platform for Crowdfunding is minimal. It should also be noted, as FINRA is aware, that many BDs already operate internet-based software platforms which make available to investors a wide variety of investment opportunities, including private offerings under Reg-D. As such, consistent with Congress' intent to have scaled-back and streamlined regulations, CRIFRA suggests that FINRA implement a simplified process equivalent to the 10-day review and approval procedures utilized by the Advertising Regulation Department to assess the proposed web screens for compliance with the Title III investor education mandates, offering disclosure templates, and other required elements for Crowdfunding.

Recommendation I: We recommend that that BDs who are approved for private placement business have no special or distinct requirements and that Crowdfunding be viewed as just another type of exempt private placement, and rather than being considered some new form of business, Title III exempt offerings ought to be covered under a BD's existing and approved "private placements" business line and the FINRA rules on advertising be expanded to cover a review of a BDs proposed Crowdfunding platform elements that the public and investors will see.

While Crowdfunding represents a new category of exempt private placement, the role and responsibilities of a BD will be substantially the same as under existing rules. Moreover, it is in the public interest to encourage the participation of member firms in this emerging market, since such firms can easily adapt their established policies and procedures to ensure investor protection and compliance with FINRA's rules. We also note that the new rules which FINRA develops for Crowfunding should be applied equally to RP's and BD's.

Registered Portals – A New, Limited Operating Entity

Pursuant to Title III, a Registered Portal is an SEC Registered, FINRA member non-broker-dealer entity formed for the purpose of conducting operations in a singular form of securities offering exempt from the registration requirements of the Securities Act of 1933, "Crowdfunding". A securities offering per the Crowdfunding exemption may only be conducted in a specific manner and subject to both limitations defined in the Act as to how much a business may raise and how much an unaccredited investor may invest.

These limitations by themselves were intended to be the primary investor protection safeguards—ensuring the limited activity and operational compliance of a Registered Portal should be the primary focus of the regulations applicable to them. Unlike private placements involving a broker-dealer as agent, where the responsibilities are well-known and substantial, the Registered Portal should not be perceived as having nearly the level of involvement or responsibility when they enable a Title III exempt securities offering. With the exception of specific limited responsibilities under the Act (including not recommending specific investment opportunities, conducting background checks of the businesses and associated persons, educating unaccredited investors on investing and the specific risks of private placements, and not becoming entangled in the use of social media), Title III was designed with a "light touch" approach to operating rules and regulations in mind.

Recommendation II: Registered Portals should comply with the statutory requirements and satisfy FINRA's membership process. As such the Registered Portal ought to be considered merely a conduit for both businesses and investors to form direct relationships with one another. Unlike typical broker-dealers, much of the intended business of a Registered Portal will be automated and so long as they continue to conduct their operations as approved per the rules and regulations of its licensing, the Registered Portal would remain in compliance.

In this context, and following Title III's design and intentions, we would respectfully recommend that there be a two step approach to regulating a Registered Portal: Step One is to ensure that FINRA is comfortable with management of the Registered Portal and that the systems and design of the Registered Portal prior to being operational comply with Title III in all respects, and Step Two: FINRA monitors the activity of the Registered Portal to ensure that the Registered Portals operations do not deviate from the pre-approved operations. For this reason, our considered view is that the activities of the Registered Portal and the intended business to be conducted thereupon are similar to a broker-dealer only in this extremely limited regard, and consequently, we believe that it would not be appropriate for such an entity to be burdened with the same large scope of rules and compliance as a broker-dealer that is engaged in multiple forms of private placements and other business lines. We are nonetheless fully mindful and supportive that it is important for the proper emergence of this industry that Registered Portals be held to rules and procedures related to this form of private placements to ensure operational integrity and investor protection.

Recommendation III: Registered Portals should able to charge issuers fees and other compensation so as to be profitable and able to maintain ongoing operations. All such fees, including the total of all fees, should be charged in accordance with industry Best Practices and FINRA rules, including NASD Notice to Members 92-53. As we have recommended previously, our view regarding the compensation that a Registered Portal may charge for use of its platform should be: (a) consistent with the historic calculations used in connection with establishing "fair and reasonable" remuneration, and (b) consistent with industry norms and Best Practices as well as those relating to non-securities based, donors, rewards, advertising and perks-based Crowdfunding being conducted today.

Broker Dealers & Registered Portals – Working Relationships

There are many potential opportunities for Broker-Dealers and Registered Portals to work cooperatively and we believe that collaboration of these two types of SEC registered, FINRA member entities be permitted to

share compensation and other working relationships. Without this incentive, they will be less likely to facilitate this form of securities placement activity that could benefit both the businesses in need of financing, investors in general, and the US economy as a whole. As currently prescribed by Title III, a Registered (non-BD) Portal may not: (a) give advice by using discretion in recommending specific investment opportunities on its platform, (b) pay any compensation for the introduction of investors to its platform, or (c) provide any investment advice. We agree with this, and note that there is no statutory limitation on permitting appropriate strategic relationships to develop between Broker-Dealers and Registered Portals, assuming that it benefits all constituent parties and isn't in contravention of Title III.

Recommendation IV: We believe it is inevitable that BD's and RP's will work together or interact as the industry develops and matures. Therefore, rules that foster and guide working relationships and fee arrangements consistent with the JOBS Act and their respective registration capacity (BD vs RP) - rather than simply prohibit such arrangements - will yield greater regulatory compliance and control.

Examples: Here are a few (not exhaustive) examples of why permitting such relationships (including limited fee splitting), deserves serious consideration:

1. Syndication – The market would benefit if BD's and RP's were allowed to work together in helping achieve successful fundraisings via Title III exempt offerings. Naturally this would require the ability for them to share fees.
2. Referrals – As RP's are extremely limited in the products and services they can provide, it would benefit businesses if an RP could refer a successfully financed entity to a BD for more advanced assistance. Of course the RP should be compensated for the referral.
3. Technology – Many RP's are technology-driven companies. BD's could benefit from a relationship whereby they white-label or otherwise leverage the software and services of the RP.

The members of CFIRA remain available for further discussions relating to defining the framework for Broker-Dealer and Registered Portal operating mechanics and working relationships. We will continue to be available to work with FINRA in developing industry standards and best practices that will balance the need for a healthy ecosystem and capital formation, ensuring investor protection whenever possible. We look forward to continued dialog between all parties as the rulemaking process progresses.

Respectfully submitted,

Scott Purcell
Arctic Island
CFIRA Board Member

CROWDFUND INTERMEDIARY REGULATORY ADVOCATES