



CrowdFund Intermediary Regulatory Advocates
CROWDFUNDING BEST PRACTICES

For
Portals Operating Pursuant to Title II and Title III of the JOBS Act

This guide to Best Practices has been developed by industry experts, including registered portals, broker-dealers, attorneys, and cyber security experts. All participants are strongly encouraged to adopt these guidelines as the central part of their online service standard operating procedures.

Note that this document has, as of November 15th, 2012, been prepared as a guideline to be shared with FINRA and the industry at large to represent CFIRA's views in order to advance considered approaches as to how an Intermediary (Broker or Registered Portal) ought to operate as the nascent industry matures. This reflects CfIRA's current thinking, and we recognize that "best practices" as a standard term of art is considered a method or technique that has consistently shown results superior to those achieved with other means, and that is used as a benchmark. As this industry is still in the formative stages, and thus does not yet have the benefit of historical results, these recommended "best practices" will unquestionably evolve as the industry matures.

Table of Contents

- I. Definitions
- II. Offering Memorandum
- III. Fraud Deterrence & Detection
- IV. Portal Operations & Back Office
- V. Fees
- VI. Offering Display and Management
- VII. Investors
- VIII. Cyber Security and Recovery
- IX. Operating Exemptions
- Appendix: Guidelines & Recommended Practices
- Appendix: Best Practices Industry Oversight Committee, Authors & Contributors

I. Definitions:

- a. **Funding Portal** – (also “Portal” or “Intermediary”) an SEC registered, FINRA member entity acting as an intermediary and offering a platform (as defined in c. below) where transactions occur between small (“emerging” as defined in Title I of the JOBS Act) businesses seeking to raise capital via an exempt offering of securities of any form (equity or debt), and investors who desire to participate in such offerings, pursuant to either [Title II \(allowing general solicitation and advertising of offerings under Securities Act of 1933, as amended, Regulation D Rule 506 \(“Rule 506”\)\)](#) or [Title III \(Crowdfunding\) exemptions under the JOBS Act](#).
- b. **Broker-Dealers vs Registered Portals** – although not all “Portals” are Broker-Dealers (“BD”), BDs are - by definition under the JOBS Act in Title III, Section 304.(a)(h)(2) – already considered to be Portals. Thus these Best Practices are for the operation of a platform (as defined in c. below) regardless of whether it is operated by a Broker-Dealer or by a Registered (non-BD) Portal (“RP”). BDs may offer both Title II and Title III offerings on their platforms, whereas RPs are limited to Title III offerings only.
- c. **Platform** – the software used by a Portal to allow the publishing of content, storage and archival of data, presentation of content via web and other internet technologies, and for issuers to publish 506(c)-D and/or Crowdfunding offerings, the public to view such offerings and investors to participate in such offerings.

- d. **Crowd-Vetting** – the ability, and right, of people not associated with the Funding Portal to rate, review, comment on, and perform their own independent due diligence, and share it publicly, on any offering and/or any or all persons associated with it.
- e. **Escrow** – A trustee, qualified pursuant to FINRA rules, who on behalf of an issuer and investors participating in an offering holds funds and maintains the escrow ownership ledger. The Trustee holds such funds in an account at a US Federally insured bank entitled “XYZ as trustee for escrow <name or number>”.
- f. **Investor, Accredited** – an investor who meets the standards set forth under [Regulation D Rule 501\(a\)](#).
- g. **Investor, Unaccredited** – any investor who does not meet standards set forth under [Regulation D Rule 501\(a\)](#), or whose accreditation status cannot be reasonably confirmed.
- h. **Issuer** – an emerging business, as defined under [Title I Section.101 '\(19\) of the JOBS Act](#), that is raising funds by selling securities via either a Title II or Title III offering.
- i. **Offering (aka “Deal” or “Financing”)** – an offer to accept investment in an emerging business by means of a sale of securities.
- j. **Offering Memorandum** – the document or web pages which display the information and disclosures provided by the issuer.
- k. **Rescission Right** – the right of either an investor to cancel or an issuer to rescind an investor’s participation in an offering, or an entire offering prior to the Securities Sold Date.
- I. Securities Sold Date –**
 - i. **506(c)-D:** the date on which investors no longer have the ability to cancel their participation commitment, usually the date of the first closing.
 - ii. **Crowdfunding:** the closing date of the offering, after which investors no longer have the ability to cancel their participation in the offering. Per Section 302.Sec4A.(a)(6) of the JOBS Act, the close date should be no sooner than 21 days after the offering memorandum is published online for public view AND the portal has filed required SEC notices.

II. Offering Memorandum:

- A. The offering memorandum is the most critical document on a platform. It provides details and disclosures of the issuer and the securities being offered. This information is also the based in part on the issuer’s disclosure requirements in Section 302.Sec 4A(b) for an issuer who offers or sells securities pursuant to the crowdfunding exemption. It forms the basis from which both the Funding Portal and investors (and other site users) will perform due diligence and vet an offering.

Elements consistent with a properly formed offering memorandum include, at a minimum:

- a. Issuer’s Corporate Name;
- b. Issuer’s Entity Type and State of Formation;
- c. Name(s) of Executive Officer(s) and director(s);
- d. Issuer’s Business (Operating) Address (not service of process address);
- e. Issuer’s Tax ID;
- f. Issuer’s Website (if any);
- g. Year Founded;
- h. Stage of Company Life Cycle (start-up, expansion/growth, revitalization, etc);
- i. Industry of the Issuer;
- j. Description of the Business;
- k. Business Plan, which includes a discussion of the market the company operates in, as well as a discussion of its competitors (if any);
- l. Current Financial Statements, including a profit and loss statement (“P&L”) and balance sheet, along with either an executive or accountant certification or an auditor letter, as required under SEC and FINRA rules;
- m. Revenue, both previous month and previous 12 months (if the financial statements above are summary and not month over month);
- n. Profits/Losses, both previous month and previous 12 months (if the financial statements above are summary and not month over month);

- o. Tax Returns for most recent year (if one exists, start-ups would naturally not have this);
- p. Exemption the Offering is Conducted Under (506(c)-D or Crowdfunding);
- q. Type of Securities being Offered (e.g. common stock, preferred stock, debt, convertible debt, etc);
- r. Amount of Offering, along with any over-subscription allowances;
- s. Closing (Securities Sold) Date, or “dates” if other than all-or-none offerings;
- t. Price per Share, if equity, along with a description of how this was calculated;
- u. Issuer’s Current Shareholder Schedule, listing by name all owners of 10% or more of the company (including those with contractual rights to ownership, such as granted by options or warrants), and by type of equity held. Furthermore, the Schedule must disclose all option pools which have been created by not allocated, and these must be included in the calculations of the “fully diluted ownership interest” that is represented by the offering;
- v. Fully Diluted Ownership Interest (if equity) that is represented by this offering;
- w. Term of Offering, the amount of time it will remain open after which it will expire if the funding goal is not met;
- x. Description of the Offer;
- y. Minimum Investment Amount;
- z. Use of Proceeds, pursuant to Title III, Section 302, Sec. 4A(b)(E) of the JOBS Act. This should include a discussion of how long the funds being raised will last, and disclosure of specific targeted expenses representing 5% or more of the amount raised;
 - aa. Exit Strategy, a discussion of how and when investors might (not not a guarantee) reasonably expect to get their money back (plus the return described in the offer);
 - bb. Description of Compensation, including the wages, salaries, contracts, bonus programs, commission plans, etc. of executives, directors and key employees. Include details, disclosures, discussion of current and future plans;
 - cc. Disclosure of whether the business and/or its owners or key executives are currently involved or threatened with, directly or indirectly, or has reasonable expectation of becoming involved in any civil or criminal actions. This includes any and all actions, including, but not limited to, civil, criminal and regulatory, via courts, arbitration, labor board, trade associations, and/or any city, state, federal, industry or professional entities. If yes, a description should accompany this;
 - dd. Permits & Licenses – is the company, or any product or service, subject to any regulatory or governmental approvals or oversight, or local, state or national licenses (other than basic city/county/state business licenses), permits, or other requirements they must obtain or fulfill for their business to operate and execute the business plan they are presenting to investors? (e.g. FDA, GSA, EPA, ATF, zoning, etc.) If yes, then a detailed description should be included, of which a discussion of the status of such items is essential;
 - ee. Amount Invested Previously, detailed by founders, bank debt, family, SBA, and other investors;
 - ff. Amount Invested in Last 12 Months, in the form of equity, from persons other than employees, executives or directors;
 - gg. Number of Shareholders who are employees, directors or accredited investors;
 - hh. If the Form of Equity in the offering and the rights thereunder are different in any way from those of other equity owners, then a discussion of if and how the rights of the shares in this offering may be materially limited, diluted or qualified by the rights of any other class of ownership, or if the rights of investors participating in this offering could in any way be negatively impacted by the rights held by insiders or other principal shareholders (including future contractual rights associated with any option agreements, warrants or employment agreements);
 - ii. Amount of Existing Debt in the business, and a discussion thereof;
 - jj. Risk Disclosures associated with the offering and the business. These should include items specific to the business being funded, and general items such as inexperience of management, under capitalization, market risk, conflicts of interest, etc ; and,
 - kk. Investor Subscription Agreement.

Funding Portals may request and display other items, many of which may be particular to a specific audience or niche, and that are part of the Portals standard service. Such unique items, while permissible, do not fall under these Best Practices.

- B. Furthermore, it is appropriate for the Funding Portal to require issuers to provide certain information that will not be displayed to users of the service, but which are essential for conducting background checks, including US Treasury and Homeland Security checks, and are considered a fundamental and essential function of the Funding Portal's responsibilities. These include;
 - a. Name, address, social security or tax id number, phone number and email address of every officer, director and 10%+ shareholder (including options or warrants).

III. Fraud Deterrence & Detection:

- A. It is absolutely fundamental, for both investor protection and for the health of the industry, that all Funding Portals adhere to the Best Practices set forth regarding fraud deterrence and detection.
 - a. **Offshore Businesses** – take appropriate steps to ensure that offering memorandums are not being published for businesses outside the USA.
 - b. **IP Proxy Check** – ensure that the IP address of the person creating the offering memorandum is not associated with a known proxy (lists of which may be obtained by commercial services).
 - c. **Company Address** – Portals should take steps to confirm that a company address is a business address of the company, and not just a service-of-process address.
 - d. **Central Database Participation** – If and when a database provider or providers is/are approved by regulators or recognized by CFIRA, or, if provided directly by a regulatory agency, Portals should participate to check the following cross-Portal information;
 - i. Unaccredited investor 12 month rolling investments made on crowdfunded placements;
 - ii. Issuer fundraising amounts completed for crowdfunded offerings;
 - iii. Concurrent offerings by the same issuer on other Portals;
 - iv. Concurrent offerings by related persons of an issuer in other offerings on other Portals;
 - v. Common address matches for different issuer names on other Portals (*which may indicate an off-shore or other inappropriate party attempting to raise funds*); and,
 - vi. Common issuer credit card payees or addresses for different issuer names on other Portals.
 - e. **FINCEN** database checks should be performed on all issuers and investors.
 - f. **OFAC** database checks should be performed on all issuers and investors.
 - g. **Background Checks** – must be performed on the company, and on every officer and director, as well as on all persons who own or have a right to 10% or more of the business. These include, but are not limited to, criminal and civil actions.
 - h. **Due Diligence** – should be conducted as is operationally and financially practical for the size of the offering.
 - i. **State Document Comparison** – check to ensure persons listed as officers and/or directors on the offering memorandum are the same as on file with the state in which the business is organized (if accessible on the State department of business website).

These checks must be performed prior to any offering being displayed publicly on the platform.

- B. Management should not allow any offerings with exceptions to be posted publicly on the platform pending further internal review. An audit trail of internal notes should be retained indefinitely in electronic form.
- C. Abuse Alerts and other user communications sent to admin are essential tools in getting responses of the crowd-vetting of an offering. Management must have a system to bring these to the attention of staff and develop internal processes to flag and promptly investigate incidents of suspected fraud.

IV. Portal Operations & Back Office:

- a. **Regulatory Compliance** – the firm should be SEC registered and a FINRA member, and conduct operations in accordance with all applicable rules.

- b. **Deal Review** – all offerings should be reviewed by a principal of the firm prior to being displayed publicly on the platform to ensure consistency with the Portal’s Terms of Use Agreement.
- c. **Deal Due Diligence** – appropriate due diligence (e.g background checks) must be performed, reviewed, and provided to a principal of the firm prior to an offering being displayed publicly on the platform . Such background checks should be conducted in accordance with rules and guidance set forth in the JOBS Act and FINRA rules.
- d. **Automatic Regulatory Disqualifications** – in the event that any background check returns an item which results in an automatic disqualification (e.g. a director has a securities fraud conviction 2 years ago), then the offering should be notated and suspended such that it is not publicly displayed on the platform. JOBS Act Title III disqualifies any issuer from crowdfunding that (i) is subject to a final order of a Federal or State securities or insurance commission or banking authority that bars the person from associating with or engaging in such securities, insurance or banking activities; or (ii) was convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving any false filing with the SEC. In addition, the SEC may implement bad actor disqualifications for issuers using Rule 506.
- e. **Photo & Document Review** – all images and documents uploaded or communicated on the platform, even on the platforms social applications (if any), should be promptly reviewed for objectionable or inappropriate content as determined by the operating standards of the Portal (e.g. profanity, pornography, etc).
- f. **Exception Reports** – should be generated for anti-fraud measures, as well as for investor suitability and for systemic abuse of any deal ratings (e.g. rapid or same IP posting with high or low ratings of an offering). Exception reports and accompanying admin notes should be maintained indefinitely in electronic form.
- g. **Admin Notes** – should be date and timestamped and accessible to administrative personnel on the associated deal or member profiles. They should be private such that only approved Portal personnel can view them.
- h. **Insurance** – Portals should carry appropriate insurance to cover their business, including Errors & Omissions and cyber-liability.
- i. **FINRA Links** – prominently displayed on the website should be a “FINRA Member” logo or text that links to the Broker-Check System (or, if available, a Registered-Portal-Check application).
- j. **Registered (non-BD) Portals** – should clearly state that they are not broker-dealers in their Terms of Use Agreements and elsewhere on their website, as appropriate, so as not to be held to the same standards and accountability as BD’s.

V. Fees:

- A. Funding Portals should 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 FINRA caps and guidance, including Notice to Members 92-53.
- B. Under no circumstances should any fees or charges be deducted from escrow prior to a deal closing, as those are investors funds and NOT (yet) the issuer’s funds.

VI. Offering Display and Management:

- a. **Posting Date** – an offering should not appear publicly on the platform until all appropriate due diligence checks and anti-fraud procedures have been performed and a firm principal has reviewed the offering memorandum and accompanying notes from staff and third-party service providers. The posting date should display on the offering memorandum.
- b. **Investor Vesting Details** – Although investor profile names, locations, thumbnails, and other information such as the number of deals they have backed may be publicly displayed (unless the investor has indicated otherwise in their profile privacy settings), personal details such as an investors address, phone number, email address, tax ID, etc should only be viewable by the issuer and by the specific investor, as well as by the broker or registered investment advisor of the specific investor(s)

associated with them, and admin staff of the Portal. This would not restrict the issuer from requesting the Portal to provide its designated transfer agent, or its software-as-a-service issuer-managed investor management system, with an electronic file or other data exchange (such as via an API) with an initial, at close, investor data set.

- c. **Securities Sold Date** – until the date securities are actually sold, both the investor and the issuer should have the right to rescind any investment commitment. Per Section 302.Sec4A.(a)(6) of the JOBS Act, the close date should be at least 21 days after the offering memorandum is published online for public view AND the portal has filed required SEC notices. This triggers various regulatory filing requirements and prevents a situation where an investor must “sell” securities (to the issuer) in order to rescind an offering, and a situation where an issuer is incapable of disallowing an undesirable investor.
- d. **Offering Changes** – in the event an issuer makes a material change to his offering memorandum, the offering should be suspended pending admin review. Furthermore, all investor commitments should be reclassified in some manner (e.g. to a “pending” status), indicating that the investor will not be included in the purchase of securities at the close date if they have not reviewed and approved the changes.
- e. **Escrow Balance** – should be accessible by the issuer, with a ledger detailing all activity in the escrow account.
- f. **Escrow Debits** – the only debits allowed to escrow balances during the fundraising process are those associated with cancelled investor commitments (returning an investor’s funds). Absolutely no fees or charges may be made to the escrow account, as these are investors’ funds and, until the Securities Sold Date, not the issuers’ funds.
- g. **Delivery** – all investors should be informed that securities are book-entry and, unless the Portal is a qualified clearing firm and holding the securities in customer accounts, that the issuer or their duly appointed transfer agent, and NOT the Portal, will be responsible for maintaining shareholder or debt holder records. This, along with an email confirmation of the securities purchased, should be defined in all agreements as “good delivery”.
- h. **Closing** – at closing, all proceeds, net of Portal fees and charges (unless already paid by credit card), should only be wired to a US Bank, at a branch office located within the US, and in US Dollars. The credit-to should be the exact company name as disclosed on the offering memorandum. This is a final anti-fraud check, as offshore banks are disqualified and a receiving bank may be held liable if they apply funds to a differently named recipient.
- i. **Canceled or Expired Offering** – in the event an offering does not close, for whatever reason, then the deal should be notated appropriately and all investor funds returned from escrow in accordance with FINRA rules.
- j. **Offering Retention and Display** – regardless of whether an offering is successful or cancelled, it should be retained by the Portal and accessible online indefinitely, as it is part of the public record. And issuers should not be permitted to delete or alter an offering memorandum in any way once it has been closed, cancelled or expired.

VII. Investors:

- a. **Unaccredited Investor Education** – unaccredited investors should, pursuant to Title III, Section 302. Section 4A.(a)(4)(C) of the JOBS Act, be required to go through a basic investing education course and answer questions demonstrating they understand the high level of risk, the illiquid nature of the securities, and other matters as the SEC and FINRA deem appropriate. This may be created by the Portal or by third-party service providers, and may be online or classroom. The program should, at the very least, discuss the risks associated with investing in private offerings, and in closing suggest they always seek the counsel of their attorney, accountant, RIA or broker before making any investment decisions.
- b. **Accredited Investor Confirmation** – although the Act and SEC rules place the burden of determining an investor’s accreditation status on the issuers, it is considered a best practice for the Portal to confirm the status of all investors claiming accredited status prior to the sale of any securities to such investors. For convenience and practical application, a Portal need only confirm the accredited status

of an investor one time, and such confirmation will cover all of the investors' activity on the platform, with no need to reconfirm accreditation every time they make an investment. Only such confirmed accredited investors may be permitted to purchase securities in Rule 506(c)-D offerings.

- c. **Investor-Type Questionnaire** – upon registering on the platform, all investors should be presented with appropriate questionnaires. For accredited investors this means the standard questions pursuant to [Rule 501 of Regulation D](#). For unaccredited investors it means the income and net-worth questions as defined in [the JOBS Act in Title III](#).
- d. **Investor Risk Affirmation** – all crowdfunding investors, for each investment they participate in, prior to allowing any investment in any offering, should be required to electronically acknowledge and positively affirm the general illiquidity of the investment, as well as significant risk of losing their investment, along with any or all anticipated returns, and affirm that they can bear such loss without recourse. This is pursuant to Title III, Section 302. Section 4A.(a)(4)(B) of the JOBS Act.
- e. **Investment Confirmation & Cancellation Notices** – confirmations of investment commitments should be emailed to the investor concurrent with their entering into the subscription agreement. Likewise, if an investor or issuer cancels a commitment, the investor should be emailed a notification. At closing, investors should be emailed a notice of their purchase and ownership of the securities they committed to. If an offering expires without funding or is cancelled entirely, investors should be emailed a notification and alerted that their funds are being returned to them from escrow.
- f. **Investment Summary** – investors should be able to see, online, a list of deals in which they have participated, along with their vesting information, which broker assisted them (if any), and contact information for the issuers.
- g. **Privacy Settings** – investors should have the ability to set their profiles to “anonymous” or otherwise so that they are not displayed on deal pages to anyone except to the issuer, to their broker or registered investment advisor, and to Portal staff.
- h. **Escrow Cash Received/Disbursed** – investors should be able to see, online, a ledger that shows their money received into escrow for offerings they have invested in, and for any funds returned to them from escrow on cancelled offerings or participations.
- i. **Risk Disclosures and Subscription Agreement** – should be presented electronically, with investors agreeing to such documents using standard web practices. The Portal should email the investor a copy of these documents along with their investment confirmation.

VIII. Cyber Security & Recovery:

- a. All databases, if hosted in a leased facility, should be maintained on wholly-owned or leased (not shared) servers, and not in any form of “cloud” of other inseparable infrastructure. Web pages may be served via cloud or other distributed or shared architecture, but the database should not be held in such an environment.
- b. The platform data MUST reside on servers wholly-owned or leased by a BD or RP. Such databases may share a server (or servers) with other software applications of the BD or RP, including white-labeled or otherwise leased or rebranded versions of the platform to other Portals.
- c. If hosting in a leased facility with managed servers, the service provider should be a reputable firm with a history of hosting banks, broker-dealers, clearing firms and/or other regulated financial entities (e.g. RackSpace, Level 3, etc) and the servers located in a secure facility within the USA.
- d. All credit card data and personal account data, including addresses, phone numbers, email addresses, and tax ID's, should be encrypted in the database and on all backup's and distributed servers.
- e. Back-ups should be performed at least daily by the system administrators. Daily back-ups should be made to devices separate from the database server(s).
- f. The Portal should have standard service disclaimers in their Terms of Use Agreement.
- g. The Portal who is operating the platform should have a written disaster recovery plan.
- h. The Portal who is operating the platform should have cyber-liability insurance. Thus a Portal who is white-labeling a platform would not need to carry cyber liability insurance, but the BD or RP who is operating the platform should have such insurance.

IX. Operating Exemptions:

- a. **Passive Conduit** – firms that are neither providing investment advice nor carrying customer accounts should disclose to users of the service that the Portal is acting only as a passive conduit between issuers and investors.
- b. **No Entanglement** – firms that are not providing investment advice should, especially in any deal ratings and/or review applications, both as the firm and for all associated representatives and other related persons, refrain from any form of participation in such ratings, reviews or comments. Furthermore, the site Terms of Use Agreement should clearly state that the service is not moderated and that the firm in no way participates, reviews, or acts discretionally, is solely a passive conduit for, and is not entangled with such user-generated content.
- c. **Abuse Reports** – in the event of abuse reports submitted by users on various content, including deal ratings, reviews and comments, so long as the firm promptly and impartially reviews such reports and takes action consistent with its internal policies (e.g. prohibition against profanity, copyright infringements, etc), then such decisions, including those whereby no action was taken, where properly documented and an audit trail is created, should not be considered to create a situation of entanglement with such content.
- d. **IP Addresses** – it is acknowledged that certain sophisticated persons may use proxies or other devices to mask or falsify their IP addresses. Funding Portals should use reasonable technological processes to identify such persons, but should not be held accountable for instances where an IP address has been falsified or spoofed and thus the Portals' systems did not prevent the posting of an offering. However, other anti-fraud devices and processes are not discounted or exempted.
- e. **Not Underwriting** – as a “best efforts” offering where no inventory is being held and no investment advice is being given to the issuer, Portals should not be considered to be underwriting an offering. As such, a Portal should only be held to the limited due diligence standards defined in the JOBS Act.

Guidelines & Recommended Practices:

The following are important operational considerations for Funding Portals, but are not (yet) at the point where there is consensus that they are industry Best Practices. As such, we suggest Funding Portals give these guidelines due consideration, and adopt whichever ones (if any) are appropriate for their business model.

I. Fraud Deterrence & Detection:

- a. **IP Address Check** – Ensure that offering memorandums are not being created by persons from outside the USA. Portals may either deny attempts by persons offshore, or may develop an exceptions system which flags attempts and sends them for management review (e.g. a situation where a US company executive happens to be on a trip to London while creating the offering memorandum and, after performing reasonable due diligence, the Portal is satisfied that the offering is a legitimate US business and so allows it).
- b. **Issuer Credit Card** – Portals may charge an issuer a set-up fee and/or a recurring “monthly data hosting fee” via credit card. Portals may also charge issuers’ credit cards for the costs of performing due diligence (e.g. the background checks, often performed by third-parties), setting up escrow accounts, and other deal specific fees. The value of doing this ensures the capture of a merchant-bank-verified real person, real address, and (by nature of the recurring charge) real credit card. Such charges serve to deter potential fraud, since potential fraudsters are unlikely to pay to post an offering in the first place, and even if they did do so using a stolen credit card then the recurring nature of the charge(s) would likely trigger an exception report on a failed transaction. And in the event of any fraud or other problems this can help provide law enforcement with actionable data.

II. Portal Operations & Back Office:

- a. **Deal Due Diligence** – Portals may engage professional third-party service providers to conduct background checks and due diligence.

III. Fees:

- a. **Fees a Funding Portal charges might include**, but are certainly not required or limited to:
- i. Offering template set-up fees;
 - ii. Data hosting fees for maintaining drafts and the offering;
 - iii. Deal success fees, recognized upon a successful funding of a deal;
 - iv. Escrow set-up fees;
 - v. Fees for third-party service provider costs associated with background checks and other due diligence;
 - vi. Fees related to funds receipt and disbursement (e.g. wire fees, ACH fees, check deposit fees, etc);
 - vii. Fees for ongoing use of platform tools (e.g. status updates, email);
 - viii. Fees, charges and/or affiliate arrangements from third party service providers advertising on the platform (e.g. accountants, lawyers, payroll services, etc who pay the Portal for ad space and/or referrals). Any such third-party arrangements should be in line with the Portals published privacy policy.
- b. **Portals may charge issuers** these, and other, fees directly, including via a credit card of an executive or representative of an issuer. Certain fees may be charged to issuers on a non-refundable basis, while others – in particular any “success” fees – may only be charged if and when an offering successfully closes and funds.

IV. Investors:

- a. **Investor Risk Affirmation** – It is suggested that investors in 506(c)-D offerings, for each investment they participate in, be required to electronically acknowledge and positively affirm the general illiquidity of the investment, as well as significant risk of losing their investment, along with any or all anticipated returns, and affirm that they can bear such loss without recourse. This is required for crowdfunded offerings, but also recommended for investments made in Title II offerings.

V. Cyber Security & Recovery:

- a. **Credit Card Data** – it is recommended that Funding Portals do not keep credit card data on their servers and, instead, pass such data to a merchant bank to store and manage transactions.
- b. **Data Replication** – should be performed in real time across multiple servers (fail safe).

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