

CrowdFund Intermediary Regulatory Advocates
1345 Avenue of the Americas
New York, NY 10105
Telephone: (212) 370-1300

November 18, 2015

Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: FINRA Proposed Rule Change to Adopt the Funding Portal Rules and Related forms and FINRA Rule 4518 (Release No. 34-76239)

Dear Mr. Fields:

This letter is in response to the Financial Industry Regulatory Authority's (FINRA's) recent filing of proposed rules and related forms for Funding Portals, and Rule 4518 for FINRA-member broker dealers that will operate under Title III (Regulation Crowdfunding) of the Jumpstart Our Business Startups (JOBS) Act.

The Crowdfund Intermediary Regulatory Advocates ("CFIRA"), is a not for profit 501(c) 6 trade organization that advocates for regulations that will support the crowdfunding industry in connection with Title II and Title III of the Jumpstart Our Business Startups Act of 2012. CFIRA's role is to protect the interests of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members are comprised of intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in or who intend to engage in business under Titles II and III.

Changes from the draft rules

We first want to note our support for the changes from the proposed rules from Regulatory Notice 13-34, including the removal of the requirement that portals maintain fidelity bond coverage¹ and removal of the requirement that portal members develop and implement a written anti-money laundering program. These changes reflect the reality that funding portals will have limited permissible activities, and these changes are in line with creating a cost-efficient marketplace for small securities offerings.

¹ With respect to fidelity bond coverage, while it is clear in the final proposed rules that fidelity bond coverage will not be required, the new member application for portals still includes a provision to attach the security bond.

Definition of Associated Persons of a Funding Portal

We note an explicit discrepancy in the proposed rules between the general definition of “associated person” and the definition of “associated person” for purposes of Funding Portal Rule 110(a). CFIRA’s perspective is that the exclusion from the Rule 110(a) definition of employees whose functions are solely clerical or ministerial should be extended to the general definition of “associated person”. Otherwise, employees who are not listed as associated persons in the application of a funding portal will then become associated persons once the portal is approved. In addition to creating confusion by having two different definitions for the same words, this overinclusion will impose additional costs on funding portals for registration, maintenance of records and compliance processes, without a concomitant benefit in investor protection.

Expedited MAP for Funding Portals; flexible supervisory system

CFIRA supports the expedited Membership Application Process for funding portals. Again, because of their limited permissible activities, an expedited process is appropriate. Also, CFIRA supports the flexible supervisory requirements outlined in Proposed Funding Portal Rule 300(a), rather than a more prescriptive requirement. We believe flexible requirements will lead to greater innovation and potential cost savings.

No CRD requirement; no licensing of associated persons of a funding portal

CFIRA also supports FINRA’s decision to not require that portals use the CRD system, and to develop alternative systems more appropriate to the funding portal business. The CRD system is excessively complex for the limited scope of activity of funding portals, and using alternative systems will likely lead to compliance cost savings for portals. Also, we support FINRA’s decision not to require individual licensing of associated persons of funding portals. In addition to the cost savings, this decision will likely lead to greater flexibility and innovation in the roles and responsibilities of funding portal operators and employees.

Investigations and Sanctions; Code of Procedure; Arbitration and Mediation

With the appropriate modifications and exclusions contained in the proposed funding portal rules regarding investigations and sanctions (Proposed Funding Portal Rule 800), the FINRA Code of Procedure (Proposed Funding Portal Rule 900) and arbitration and mediation of customer disputes (Proposed Funding Portal Rule 1200), CFIRA supports the application of FINRA’s existing rules for broker-dealers, as modified. While compliance with these rules may impose some economic burden on funding portals, we believe they are in the best interest of a well-functioning marketplace.

Broker Dealers; Rule 4518

We believe that FINRA’s decision to require only notice from a broker-dealer before it begins Title III business is an appropriate indication that broker-dealers are largely already equipped, and have adequate experience, to handle Title III transactions, however, we note the following with respect to broker-dealers and the process for engaging in Title III business:

- The proposed Rule does not make it clear whether broker-dealers have to be approved to engage in the business of private placements before they can engage in Title III offerings.
- The “notice-only” provision of Rule 4518 suggests that engaging in Title III offerings is not a “material change of business” that would require a CMA. We would appreciate guidance on whether brokers choosing to engage in Title III offerings should have a materiality consult with their District Office.
- If a CMA may be required in order for broker-dealers to engage in Title III business, it is unclear whether such CMA will be expedited along the lines of an FP-NMA, or will follow normal CMA timelines.

Title III offerings and “private placements”

The proposed rules do not amend FINRA Rule 5123 to exempt Regulation Crowdfunding (“Reg CF”) securities from the requirements of that Rule. Does that mean that only Reg CF offerings offered by broker-dealers (since funding portals are not subject to Rule 5123) will require filing of offering materials with FINRA? We would appreciate further guidance on this point.

The members of CFIRA remain available for further discussions with the Committee and its staff in developing industry standards and best practices that will balance the need for a healthy ecosystem and capital formation while also ensuring investor protection. We look forward to continued dialog between all parties as the regulatory process progresses.

Respectfully submitted,

Chris Tyrrell
Chair
on behalf of the Board of Directors of CFIRA