

On October 9, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (the “Commission” or “SEC”) proposed rule change SR-FINRA-2015-040 (the “original filing”), pursuant to which FINRA proposed to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the “Funding Portal Rules”) and related forms and, in addition, to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook.

The Commission published the proposed rule change for public comment in the Federal Register on October 28, 2015<sup>1</sup> and received three comments in response to the proposal.<sup>2</sup> FINRA is submitting by separate letter its response to comments on the proposed rule change contemporaneously with this Partial Amendment No. 1. With this Partial Amendment No. 1, FINRA is including (1) Exhibit 4 (see below), which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 1, marked to show additions to the text as proposed in the original filing; and (2) Exhibit 5 (see below), which reflects the changes to the current rule text that are proposed in the proposed rule change, as amended by this Partial Amendment No. 1.

Not in response to comments received by the Commission, FINRA is proposing to make conforming revisions to the proposed rule change, as follow below and as shown in Exhibit 4 and Exhibit 5 of this Partial Amendment No. 1.

- For purposes of the proposed Funding Portal Rules, proposed Funding Portal Rule 100(b)(1), under the General Standards as set forth in Funding Portal Rule 100, defines the terms “associated person of a funding portal member” or “person associated with a funding portal member.” FINRA proposes to add to the end of proposed Funding Portal Rule 100(b)(1) the following: “, and, for purposes of FINRA Rule 8210, any other person listed in Schedule A of SEC Form Funding Portal.”
- Proposed Funding Portal Rule 300(a)(1)(A) provides in part that a funding portal member’s supervisory system shall provide for the establishment and

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<sup>1</sup> Securities Exchange Act Release No. 76239 (October 22, 2015), 80 FR 66348 (October 28, 2015) (Notice of Filing of Proposed Rule Change; File No. SR-FINRA-2015-040) (the “proposed rule change”).

<sup>2</sup> Letter from Chris Tyrrell, Chair, on behalf of the Board of Directors of CrowdFund Intermediary Regulatory Advocates, to Brent J. Fields, Secretary, SEC, dated November 18, 2015 (“CFIRA Letter”); Letter from Hugh D. Berkson, President, Public Investors Arbitration Bar Association, to Robert W. Errett, Deputy Secretary, SEC, dated November 18, 2015 (“PIABA Letter”); and Letter from Judith Shaw, President, North American Securities Administrators Association, Inc., Maine Securities Commissioner, to Brent J. Fields, Secretary, SEC, dated November 19, 2015 (“NASAA Letter”).

maintenance of written procedures to supervise the activities of the funding portal and its associated persons. FINRA proposes to revise the phrase “funding portal and its associated persons” to read “funding portal member and its associated persons.”

- In proposed Funding Portal Rule 900(a)(4)(C), FINRA proposes to revise “Failure” to read “failure” and to revise “Rule 9217” to read “FINRA Rule 9217.” In proposed Funding Portal Rule 900(a)(4)(F), FINRA proposes to revise “Confirmation of Transactions” to read “confirmation of transaction.”
- In proposed Funding Portal Rules 1200(a)(3) and 1200(a)(4), FINRA proposes to revise “FINRA Rule 12000” to read “FINRA Rule 12000 Series.”
- In proposed Funding Portal Rule 1200(b)(4)(C), FINRA proposes to revise “may be filed under the agreement;” to read “may be filed under the agreement; or . . .”

**EXHIBIT 4**

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed new language in this Partial Amendment No. 1 is underlined; proposed deletions in this Partial Amendment No. 1 are in brackets.

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**Funding Portal Rules**

\* \* \* \* \*

**100. General Standards**

(a) No Change.

**(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, and, for purposes of FINRA Rule 8210, any other person listed in Schedule A of SEC Form Funding Portal.

**(2) through (11) No Change.**

\* \* \* \* \*

**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 member and its associated persons;

(B) through (C) No Change.

(2) No Change.

(b) through (f) No Change.

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**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) through (3) No Change.

(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) through (B) No Change.

(C) Funding Portal Rule 300(a) – [F]failure to maintain adequate written supervisory procedures where the underlying conduct is subject to FINRA Rule 9217;

(D) through (E) No Change.

(F) Rule 303(f) of SEC Regulation Crowdfunding – [C]confirmation of [T]transaction[s]; and

(G) No Change.

(5) through (9) No Change.

(b) No Change.

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## **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) through (2) No Change.

(3) the terms “rules” and “FINRA rules” as used in the FINRA Rule 12000 Series, 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 Series, 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) through (3) No Change.

(4) No predispute arbitration agreement shall include any condition that:

(A) through (B) No Change.

(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; or

(D) No Change.

(5) through (6) No Change.

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**EXHIBIT 5**

Exhibit 5 shows the text of the proposed rule change, as amended by this Partial Amendment No. 1. Proposed new language is underlined; proposed deletions are in brackets.

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**Funding Portal Rules**

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**(b) Pre-dispute 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, and, for purposes of FINRA Rule 8210, any other person listed in Schedule A of SEC Form Funding Portal.

**(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 member 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 FINRA 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 transaction; 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 Series, 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 Series, 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; or

(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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