3 February 2014

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

Re: Jumpstart Our Business Startups (JOBS) Act--Proposed Funding Portals (Regulatory Notice 13-34)

Dear Ms. Asquith:

CFA Institute[1] appreciates the opportunity to comment on proposed rules by FINRA on funding portals for use with crowdfunding transactions under the JOBS Act. We primarily focus our comments below on aspects of the proposal relating to investor protection.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

We generally support the proposed rules that hold a member funding portal to a high standard of conduct. However, we encourage FINRA to provide additional rules that reflect requirements for portals noted in the SEC's release on Regulation Crowdfunding. For example, proposed Funding Portal Rule 200 requires a member funding portal ("MFP") to observe "high standards of commercial honor." We encourage FINRA to expand this rule by explicitly prohibiting non-broker MFPs from providing investment advice on the securities being offered through their conduits or opinions on the advisability of investing in an issuer's offering.

Discussion

In accordance with the JOBS Act that allows, among other things, the raising of capital through crowdfunding activities, SEC-registered funding portals must become members of FINRA and comply with its rules. FINRA has proposed these rules in keeping with JOBS

[1] CFA Institute is a global, not-for-profit professional association of more than 119,700 investment analysts, advisers, portfolio managers, and other investment professionals in 147 countries, of whom nearly 112,400 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 140 member societies in 61 countries and territories.

Act restrictions on an MFP's activities while aiming to maintain investor protections. The rules are modeled after comparable rules for broker-dealers, but are more limited, given the more limited role that MFPs will play in crowdfunding activities. The two proposed rules discussed below particularly address areas aimed at investor protections.

Rule 200—High Standards of Commercial Honor

Proposed Rule 200 would require MFPs to conduct their business observing "high standards of commercial honor and just and equitable principles of trade." They also would be required to effect transactions involving the purchase or sale of securities without manipulative, deceptive or fraudulent means. We support both of these requirements as reflecting basic tenets of good business.

In keeping with these objectives, MFPs will be prohibited, among other things, from sending communications that contain false or misleading statements, omissions of materials facts that would cause it to be misleading, prediction about performance or exaggerated or unwarranted claims.

This rule also would require communications be "based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security, industry, or service." Although these requirements do not apply to communications posted by issuers on an MFP's website, should the MFP know or have reason to know a communication to be false or misleading, or contain any untrue statement of material facts, the MFP may not allow it on its website.

We support these very basic requirements of honest and fair dealing. A crowdfunding investor must be able to trust that the communications provided on an MFP website are fair, true and not misleading, and that statements posted by issuers are accurate. Otherwise, the crowdfunding process will fail; a system lacking integrity will lose the confidence of investors, and thus doom the future success of other transactions.

Along these lines, and in keeping with proposed SEC requirements for MFPs, we encourage FINRA to explicitly prohibit MFP owners or operators (that are not registered brokers) from offering investment advice or recommendations on the securities being offered through their portals. Investors new to these types of transactions could easily assign undue importance to such advice or believe it to be sanctioned by regulators.

We also believe rules should expressly prohibit MFPs from compensating employees, agents or other persons for solicitations or sales relating to offerings they are facilitating as this would likely create conflicts of interest. Moreover, we urge adoption of a rule that prohibits non-broker MFPs from posting the advisability of investing in issuers or offerings, or an assessment of individual issuers, their business plans, management or risks associated with such investment. MFPs are not in a position to tout or criticize offerings or

their issuers and any attempts to do so could create significant confusion for investors. In its release on Regulation Crowdfunding, the SEC has proposed these prohibitions; we believe FINRA should follow through for the purpose of consistency and to avoid investor confusion with explicit rules that track those provisions.

Rule 300—Funding Portal Compliance

Under proposed Rule 300, an MFP would have to establish and maintain a supervisory system, including written procedures, to oversee its activities and associated persons. This rule also establishes the requirement for an MFP to allow examination and inspections by FINRA and the SEC. We support both of these requirements as needed to ensure the accountability of MFPs and to ensure they are in compliance with the laws and regulations established for crowdfunding activities.

In addition to requiring MFPs to establish anti-money laundering compliance programs, Rule 300 also would establish reporting requirements for MFPs. Specifically, if an MFP knows or should have known of any of the following allegations, it would have 30 days to report to FINRA that it or an associated person

- has been named as a defendant or respondent or found guilty in a proceeding involving violations of certain securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct;
- has been accused in writing of fraudulent conduct or misuse or misappropriation of funds or assets;
- has been sanctioned by or denied membership into an securities-, insurance-, commodities-, financial- or investment-related organization (or barred from associating with members of such organizations);
- has been involved with a felony, or with a misdemeanor that involves the purchase of a security, a false oath or 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;
- is a director or other entity that was suspended, expelled or had its registration denied or revoked by a regulatory body, jurisdiction or organization, or is associated with certain financial institutions connected with a felony or misdemeanor;
- is a defendant in certain securities-, commodities-, or financial-related insurance-civil litigation or claims for damages by an investor, broker, dealer or funding portal member; or
- is involved with the sale of a financial instrument, the provision of investment advice or the financing of such activities with any person who is subject to a "statutory disqualification."

We support the requirement that MFPs alert FINRA about issues covered in the list above. Investors would wish either to be made aware whether an MFP or its affiliated persons are party to such issues prior to investing, or to bar MFPs with such problems from acting as a portal until these matters are addressed and remedied.

MFPs also must report to FINRA if any associated person is subject to disciplinary action involving suspension, termination, withholding compensation or other remuneration or the imposition of fines over $2,500 that "would have a significant limitation on the individual's activities on a temporary or permanent basis."

It is unclear from this how it will be determined if the disciplinary activity noted above "would have a significant limitation on the individual's activities". We suggest that FINRA provide guidance on how this should be applied.

Conclusion

We generally support the proposed funding portal rules in terms of requiring disclosures aimed at providing investor protections. Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or Linda L. Rittenhouse at linda.rittenhouse@cfainstitute.org or 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards
and Financial Market Integrity
CFA Institute

/s/ Linda L. Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets
CFA Institute

To:

FINRA
1735 K Street
Washington, D.C. 20006

RE: Comments for Funding Portal rules 13-34

February 2nd. 2014

The following are our comments to the proposed rules:

Considering the very limited activities of an equity funding portal, the proposed FINRA rules as publisher for comments in 13-34 are burdensome and should be simplified to reflect the funding portal's hardship to complying with some of the requirements, including the application form FP-NMA.

Furthermore, we feel the following items should be clarified or eliminated:

1, Proposed rule 300 (b) requires each funding portal to implement a written portal Anti-Money Laundering (AML) program.
Since funding portals are not allowed to handle or hold investors' funds, that function should be left to PayPal, or the Escrow company receiving the funds. An investor might have a U.S. address but the funds could come from Nigeria. A portal has no way to know it ! Beside it, escrow companies already been doing this as part of their service. That would be a costly duplication.

2, Evidence of the $100,000 Fidelity Bond should not be required til the funding portal's application is approved. That would save 60 days worth of premium and much more in case the application is not immediately approved.

3, Compensating employees for securities solicitation should be better defined to eliminate gray areas. HR3606 Act only referring to soliciting investors. The Act has no reference to soliciting issuers !

4, An "Associated Person" should be also more narrowly defined. (on page 3 of 50 defined as) :
….. .. *controlled by a funding portal member or any employee of a funding portal member.*
Does this includes employees whose jobs are exclusively:
a, to inspect the issuers facilities, guiding them through the funding process and provide them with business or technical/product related advice (like V.C.-s are doing with firms they have invested in) other than providing legal or investment related advice ?
b, persons dealing with investor's support over the phone or internet, helping with website navigation, registration questions or credit card payment refund issues, without providing investment or legal advice ?

5, Funding portals would welcome a templete for *Supervisory Plan* as FINRA would prefer them. Otherwise it would take a complete Law Office to produce one, and still would be a

"hit-and-run" proposition.

6, V(b) of form FP-NMA asking for evidence of Contract.
The agreement between PayPal, Escrow companies and Transfer Agents we referring the issuers are mostly verbal in nature, and instructions are via eMail memos. The HE3606 Act also allows issuers to issue their own Stock Certificates.

7, Does a Pre-Dispute Arbitration Agreement mandatory or just an optional item ?

Respectfully submitted by,

T.W. Kennedy, B.E.
CyberIssues.com

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

February 3, 2014

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

Re: Regulatory Notice 13-34: Request for Comment on Proposed Funding Portal Rules

Dear Ms. Asquith:

On October 23, 2013, the Financial Industry Regulatory Authority (FINRA) published a request for comment on a set of proposed rules and related forms (collectively, the Funding Portal Rules) for SEC-registered funding portals that become FINRA members pursuant to the equity crowdfunding provisions of the Jumpstart Our Business Startups Act (JOBS Act).[1] As proposed, the Funding Portal Rules provide a streamlined process tailored to the limited scope of activities that SEC-registered funding portal would be permitted to engage in.

The Financial Services Institute[2] (FSI) appreciates the opportunity to comment on this important proposal. FSI and its members support the proposed goals of equity crowdfunding included in the JOBS Act. Legislative and regulatory efforts that increase American job creation and facilitate capital formation and entrepreneurship are to be encouraged, particularly for individuals and businesses that do not have ready access to capital through more traditional channels. However, FSI and its members have concerns with some aspects of equity crowdfunding that can be suitably addressed through additional guidance from FINRA and other regulators. Specifically, firms and advisors who have no interest in participating or engaging with crowdfunding offerings and intermediaries require additional information and guidance in order to avoid regulatory violations and liability for clients' investment losses in crowdfunding offerings.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a

[1] Regulatory Notice 13-34, Jumpstart Our Business Startups (JOBS) Act, *available at* http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p370743.pdf.

[2] The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.[3] These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically "main street America" – it is, in fact, almost part of the "charter" of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.[4] Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

<u>Comments</u>

FSI appreciates the opportunity to provide comments on the proposed Funding Portal Rules. We offer similar comments to FINRA on this proposal as we have submitted to the SEC regarding S7-09-13: Proposed Crowdfunding Rules.[5] While we support the intended goals of equity crowdfunding as articulated by its supporters, there remain concerning elements regarding the scope of liability to firms and advisors who do not wish to engage in in equity crowdfunding. Of the IBD member firms polled by FSI, none have plans to participate in equity crowdfunding in any fashion, including as funding portals. However, firms and advisors believe that the proliferation of equity crowdfunding offerings and the high visibility of these investments through internet

[3] Cerulli Associates at http://www.cerulli.com/.

[4] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisers.

[5] SEC Proposed Rules, "Crowdfunding," Federal Register, Vol. 78, No. 214, November 5, 2013, p. 66428. Release Nos. 33-9470 and 34-70741; File No. S7-09-13 *available at* http://www.sec.gov/rules/proposed/2013/33-9470.pdf

platforms pose a liability risk in instances where clients approach advisors regarding an interest to invest in crowdfunding offerings.

For example, an investor interested in investing in a crowdfunding venture may approach their financial advisor with directions to liquidate some of their existing investments and tell their advisor they plan to invest the money in a crowdfunding venture. If the client later loses their investment in the crowdfunding venture, they may then place blame on their financial advisor for failing to advise them of the risks or for failing to advise them against investing. Even if the investor did not inform their advisor of their intention to invest in a crowdfunding venture, the investor may claim the advisor should have inquired and advised them against investing. Other examples might include a client simply asking their advisor about a crowdfunding venture and assuming the resulting conversation constitutes financial advice. FSI members are concerned about these scenarios resulting in investors filing claims against advisors and the firms in order to recover their lost investment, even though the advisors and firms were not in any way involved in the crowdfunding venture.

Correspondingly, FSI provides the following comments:

- **Request for Regulatory Guidance:** FSI requests clear guidance regarding advisor and firm liability with respect to investment losses in equity crowdfunding offerings. FINRA should work with the SEC to provide information regarding the scope of liability for firms and advisors when an advisor is approached by a client with an inquiry regarding an investment in an equity crowdfunding offering.
- **Request for Model Waiver Language:** FSI believes that FINRA and the SEC should work together to release model waiver of liability language that advisors can provide to clients with respect to equity crowdfunding. The language could be provided to a client at the time they discuss crowdfunding with their advisor or shortly thereafter.
- **Request for Educational Website on Crowdfunding:** FINRA, perhaps in conjunction with the SEC, should also provide information regarding crowdfunding and the associated risks on a website. Potential investors could access the website to learn more about crowdfunding and firms could easily direct clients to the website in the waiver language or in other educational efforts.
- **Retrospective Review of Funding Portals:** FSI and its member continue to support FINRA's efforts to conduct economic impact assessments and cost-benefit analysis for proposed and current rules. FINRA's efforts in this regard have been welcome and encouraging, including last year's hiring of FINRA's Chief Economist as well as the publication of the Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking.[6] The proposed Funding Portal Rules provide an excellent opportunity for FINRA to conduct a retrospective economic impact assessment due to the unprecedented divergence between traditional broker-dealer practices and the provisions of the JOBS Act related to equity crowdfunding. Any such retrospective economic assessment should examine whether the relaxed funding portal rules were actually effective in protecting investors or whether additional requirements should be adopted to improve investor protection.

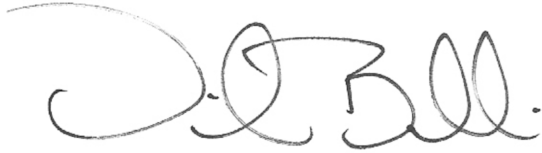
[6] Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking, *available at* http://www.finra.org/web/groups/industry/documents/industry/p346389.pdf.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,



David T. Bellaire, Esq.
Executive Vice President & General Counsel

NASAA

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Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

February 3, 2014

Via electronic submission to pubcom@finra.org

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington DC 20006-1506

RE: Comments in Response to Regulatory Notice 13-34 Regarding Proposed Funding Portal Rules and Related Forms.

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (NASAA) appreciates this opportunity to provide comment in response to your Regulatory Notice 13-34 regarding the proposed regulation of funding portals. Each member of NASAA has a keen interest in the FINRA rules that will govern funding portals because Section 305 of the Jumpstart Our Business Startups Act ("JOBS Act") preserves the authority of a state securities regulator to conduct examinations and bring enforcement actions with respect to a funding portal whose principal place of business is located within that state. However, the state rules cannot exceed federal requirements, so state regulators are put in the position of enforcing regulations that are essentially promulgated by a third party. Accordingly, we would appreciate your fullest consideration of our comments as you undertake the rulemaking process.

1. Funding Portals Should be Required to Use the Central Registration Depository.

The Central Registration Depository ("CRD") was designed to provide an efficient process for firms and individuals to apply for federal and state licenses in one coordinated filing system. To maximize the effectiveness of the system, FINRA Rule 1010(a) requires a broker-dealer to file all forms through the CRD.

A funding portal may be subject to registration with its home state as well as the Securities and Exchange Commission. To make the registration process as efficient as possible, we urge you to mandate the use of the CRD for the filing of the SEC's proposed Form Funding Portal and related forms.

President: Andrea Seidt (Ohio)
President-Elect: William Beatty (Washington)
Past-President: A. Heath Abshure (Arkansas)
Executive Director: Russel Iuculano

Secretary: Judith Shaw (Maine)
Treasurer: Melanie Senter Lubin (Maryland)
Ombudsman: Fred Joseph (Colorado)

Directors: Joe Borg (Alabama)
Douglas R. Brown (Manitoba)
Michael Rothman (Minnesota)
Daphne D. Smith (Tennessee)

2. An Associated Person of a Funding Portal Should be Required to Obtain a License.

Your request for comment states that the proposed rules do not include licensing requirements for associated persons because "they do not appear necessary in light of the limited activities of funding portals." On the contrary, funding portals are engaging in the most fundamental aspect of the securities business – being paid to help people buy and sell securities. Any person who represents a funding portal in effecting or attempting to effect the purchase or sale of securities is undertaking essentially the same role as an associated person of a broker-dealer and should, therefore, be subject to similar licensing requirements.

Licensure provides a layer of protection that is important for the customers of a funding portal. Those customers include not only the investors, but also the small issuers who rely upon the services of the funding portal. Licensure ensures that individuals operate in a professional manner and are individually accountable for misconduct.

Even if an associated person may be subject to sanctions under the proposed rules, it appears that complaints, terminations, and other pertinent information about associated persons would not be publicly disclosed. By subjecting associated persons of funding portals to licensure and disclosure obligations similar to those of registered representatives, regulators would be better equipped to police the migration of bad actors from funding portal to funding portal or to other segments of the financial markets.

Under the proposed rules, certain associated persons of a funding portal are given specific responsibilities. For example, proposed Rule 300(a)(1)(B) requires "the designation of a person with authority to carry out the supervisory responsibilities of the funding portal members," and Rule 300(b)(1)(D) requires the designation of an anti-money laundering compliance person. At a minimum, FINRA should require licensure for any person who is in a position with specific responsibilities under the funding portal rules and should give further consideration to requiring passage of qualification examinations that demonstrate a minimum level of competency to perform the assigned tasks.

3. The Funding Portal Conduct Rule Should be Enhanced to More Closely Align with the Conduct Rules for Broker-Dealers.

We recognize that not all of the existing conduct rules for broker-dealers are appropriate for the more limited business model of a funding portal. However, your proposal pares back many rules that seem applicable in the crowdfunding context. We urge you to adopt the following rules or their substantial equivalents for funding portals:

a. Rule 2150: Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts. This rule prohibits guaranteeing a customer against losses or sharing in the profits or losses in a customer's account.

b. Rule 2210(d)(1): Communications with the Public – Content Standards. This rule requires communications with the public to be truthful. The proposed rule would apply

much of existing Rule 2210(d)(1) to funding portals, but it is not apparent why the proposal fails to include rules that are similar in nature to 2210(d)(1)(C) through (E).

c. Rule 3220: Influencing or Rewarding Employees of Others. This rule prohibits a FINRA member from paying "gratuities" to non-employees, including persons affiliated with an issuer.

d. Rule 3240: Borrowing From or Lending To Customers. This rule prohibits borrowing money from or lending to a customer.

e. Rule 5230: Payments Involving Publications that Influence the Market Price of a Security. This rule prohibits the paid touting of a security to influence its price.

f. Rule 5110: Corporate Financing Rule – Underwriting Terms and Arrangements. Subsection (c)(1) of this rule prohibits unreasonable underwriting expenses or other terms. Subsection (f)(1) prohibits participation in an offering that is unfair or unreasonable in other respects.

These rules are designed to address conflicts of interest and other practices that have historically led to the abuse of investors by broker-dealers. In fact, FINRA recently published a Report on Conflicts of Interest noting that "conflicts are widespread across the financial services industry."[1] Investors in crowdfunded securities are susceptible to the same conflict-related abuses, so relevant protections should be extended to the customers of funding portals. The rules described above are relatively clear, easy to follow, and not unduly burdensome, particularly when weighed against the benefits they provide for investors.

4. Funding Portals Should be Prohibited from Placing Mandatory Predispute Arbitration Agreements in their Customer Agreements.

While NASAA has no objection to the use of voluntary arbitration clauses in customer agreements, we strongly oppose the imposition of mandatory pre-dispute arbitration agreements ("PDAAs"). In the context of crowdfunding, these agreements are especially troubling because the small investment amounts may diminish an investor's bargaining power. Moreover, a crowdfunding investor may wish to bring claims against both the funding portal and the issuer, and it appears the investor could be forced to bring the related claims in separate forums if the funding portal uses a PDAA requiring FINRA arbitration.

While NASAA has advocated for reforms to the dispute resolution process involving investors, the fundamental problem remains that individual investors should not be prohibited from choosing the forum in which they can pursue their claims against their investment professionals, even if their claims are small. Investors should be given the option to have the law applied to their claims, pursue full discovery, appeal the decision, have a written decision explaining the outcome, pursue claims in a public venue open to public review, allow the development of the law, and prevent corruption.

[1] See http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p359971.pdf.

The proposed rules acknowledge the need for streamlined oversight given the limited scope of activity of funding portals, but the proposed arbitration rules do not share that same approach. The very nature and purpose of funding portals and their anticipated customer base would require a greatly simplified and less expensive version of the traditional broker-dealer dispute resolution venue. Requiring these new members and their customers to be subject to the same process does not consider the limited nature of the transaction for either the purchaser or issuer, both of whom are clients of the proposed member.

Many investor claims may be appropriate for class actions, and we support your proposal to prohibit class action waivers because the court system is best suited for these claims. Similarly, though, the small claims process in civil court is well-suited for individual small dollar claims, and customers should have the option to use it instead of an arbitration forum.

For those parties who wish to pursue arbitration, NASAA recommends, the following additional accommodations:

a. Hearing locations. The existing number of hearing locations may not be sufficient given the envisioned mass appeal of crowdfunding and the potential for investors to be located anywhere in the country, including remote rural areas of large land mass states. The best way to serve aggrieved clients is to enable them to file a complaint in their local county courthouse if they choose.

b. Fees. The goal of crowdfunding is to attract numerous small dollar investments. The current FINRA Dispute Resolution fee structure is not practical for remedying grievances of such small amounts, and it will discourage investors from pursuing claims at all. Retaining the right to file a grievance in small claims court would be more affordable.

c. Arbitrator Pool. NASAA supports the recently revised panel approach, which defaults to the All Public Panel, and we recommend the same for the funding portal rules. In addition, the current "industry non-public" arbitrator profile may not be appropriate for this audience. Efforts to recruit representation from the crowdfunding portal industry will be required to make this resource effective for its function on the panel. However, the list of “non-public” arbitrators for funding portals should be kept separate from the list for other types of FINRA arbitrations.

5. Funding Portals Should be Required to Maintain Books and Records to Demonstrate Compliance with FINRA Rules.

The SEC has proposed a recordkeeping rule for funding portals in Rule 404 of Regulation Crowdfunding. Those rules will require funding portals to maintain a variety of records for five years, including communications with issuers and investors, records of transactions, and other “records required to demonstrate compliance” with the SEC rules governing funding portals.

We recognize that FINRA will have the ability to enforce the SEC’s recordkeeping rules. However, FINRA should adopt its own recordkeeping rule to require, at a minimum, that

funding portals maintain any record that is required to demonstrate compliance with the FINRA Rules.

6. The Grounds for a Fine Should Include the Failure to Maintain an Adequate Fidelity Bond.

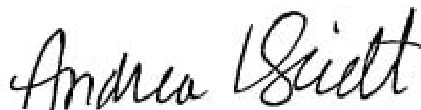
In existing Rule 9217, a broker-dealer is subject to a fine for failure to maintain adequate fidelity bond coverage. However, in the proposed corresponding rule for funding portals, Rule 900(a)(4), the failure to maintain a fidelity bond is not listed among the grounds for a fine. There is no apparent reason why a funding portal should be treated different than a broker-dealer in this respect. Given that FINRA has not articulated a reason for the omission of this important requirement, we would urge that it be included for funding portals.

Conclusion

NASAA supports FINRA's efforts to establish a rational regulatory framework that is workable for funding portals but provides an adequate level of protection for issuers and investors. We believe the comments we have noted above are representative of just such an approach.

If you would like further information or clarification, please contact me or NASAA's General Counsel, Joseph Brady, at (202) 737-0900.

Sincerely,



Andrea Seidt
NASAA President
Ohio Securities Commissioner

Dear Finra,

I am emailing you over great concerns regarding the initial cost for issuers seeking capital through equity crowdfunding III.

Some are saying that the initial cost can reach thousands to seek capital through equity crowdfunding III. This concerns me greatly because a “small percentage” of offerings get funded. This means that issuers seeking capital from equity crowdfunding III are risking money with the hope they will succeed in raising capital. What would in my opinion become a headache for Finra. This, I believe, will deter many from seeking financing through equity crowdfunding III derailing what the law was intended, to create jobs.

Many offerings based on rewards, such as those offerings made through Kickstarter, are not funded. But the “issuer” doesn’t risk upfront capital. They pay a fee when they get funded. If people have to pay thousands to raise money through Kickstarter, Kickstarter would not exist.

If I want to start a restaurant and seek $1m capital from equity crowdfunding III, if I raise only 10% of my intended goal, I just lost $1000s, well maybe that’s a good thing, because no one with business savvy would do such a thing.

This is different from an S1 prospectus filing where the issuer has a list of investors prior to paying the cost for an S1. But with equity crowdfunding it’s truly a gamble, issuers do not know how many “investors” the fundfunding portal truly has, and the number of investors that truly are interested in a restaurant offering’s. This means that the issuer is not only risking money but also hoping that the funding portal has sufficient investors that are interested in the offering made. Too many unknown unknowns.

When I heard about this all I could think about was healthcare.gov

If you are not the person(s) that I should contact please forward my email to the right person(s) or provide me with an email.

Thank you,
Charles Polanco

http://www.crowdfundinsider.com/2013/11/26291-sec-made-equity-crowdfunding-economically-unfeasible/

February 3, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-150

Via email to rule-comments@sec.gov

Dear Ms. Asquith:

I am pleased to provide these comments on the proposed funding portal rules.[1]

Introduction

Title III of the JOBS Act[2] provides a crowdfunding exception to the registration requirements of the Securities Act of 1933. The crowdfunding exception will allow small issuers to raise, subject to substantial regulation, up to $1 million a year in small increments from ordinary investors through a registered funding portal via the internet. State Blue Sky laws regarding registration and qualification are preempted.

Crowdfunding has the potential to substantially improve small firms' access to capital provided that the regulatory framework adopted by the Commission and FINRA does not impose prohibitive costs on either issuers or funding portals. It also will enable ordinary investors access to investments in start-up companies that ordinarily only accredited investors have access to. The primary advantages of crowdfunding are that it will enable small firms to access small investments from the broader public (i.e. from non-accredited investors) and that resale of the stock will not be restricted after one year. If, however, the regulatory costs associated with crowdfunding are too high, then issuers will either use other means to raise capital or be unable to raise capital and ordinary investors will be denied the opportunity to make these investments.

Firms using crowdfunding will almost invariably be the smallest of small businesses. More established firms or those seeking more than $1 million will use Regulation D or, perhaps, Regulation A+. If the Commission and FINRA overregulate crowdfunding, it will frustrate the bi-partisan intention of Congress and the President and impede both the ability of small firms to raise the capital they need to create jobs, innovate and contribute to the prosperity of the country and the ability of small investors to invest in the firms with the most potential growth. This is no idle possibility. The history of the small issues exemption and Regulation A demonstrates that overregulation can destroy the usefulness of an exemption. Recall, Regulation A as currently constituted is seldom used.[3] It is simply too costly.

[1] Regulatory Notice 13-34, "FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms," October, 2013.
[2] Jumpstart Our Business Startups Act, Public Law 112–106, Apr. 5, 2012.
[3] "Factors That May Affect Trends in Regulation A Offerings," United States Government Accountability Office, July 2012 [GAO-12-839]

The structure of the JOBS Act shows that Congress clearly intended to create a category of regulated intermediary – a funding portal – that was more lightly regulated than a broker-dealer. FINRA has an obligation to make this less regulated category work as intended by Congress and to not so heavily regulate non broker-dealer funding portals that they make no economic sense.

The proposed FINRA funding portal rules may well do just that.

Anti-Money Laundering

Proposed rule 300(b) would require funding portals to comply with Anti-Money Laundering (AML) and the associated "Know Your Customer" requirements, to file suspicious activity reports (SARs) and comply with other aspects of the Bank Secrecy Act. This is a mistake of the first order. These rules are so complex and expensive to comply with that many European banks are now unwilling to accept U.S. customers and are terminating their relationship with existing U.S. customers.

Funding portals do not handle customer funds. The JOBS Act prohibits them from doing so. The banks and broker-dealers that do handle customer funds must comply with these rules. It is inappropriate to require funding portals to comply with these rules because the ability to engage in, or facilitate, money laundering does not exist to any meaningful degree and the costs of complying with these rules are likely to be so high as to make funding portals uneconomic. It will result in a situation where the only intermediaries are broker-dealers. It will frustrate the intention of Congress to establish a more lightly regulated intermediary class.

Neither FINRA nor the Commission are likely to hear much about this at this juncture since most of the people who are considering establishing a funding portal are entirely unaware of the burden these rules impose. But make no mistake, this provision will suffocate funding portals as a separate intermediary class.

Fidelity Bonds

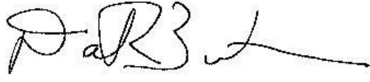
Proposed rule 110(b) would require a funding portal to have a fidelity bond of $100,000 covering losses related to fidelity, on premises, in transit and forgery and alteration, with a 10 percent deductible allowed. This bond would protect the portal from employee theft or embezzlement or other wrongdoing. Unlike a surety bond, it would not protect customers from having their funds stolen but since funding portals are prohibited from holding customer funds, this issue is of limited concern.

It is not clear that FINRA should require a fidelity bond. The risk of employee theft or embezzlement from a firm that does not hold cash or customer funds does not appear particularly high. Obtaining the bond is simply one more expense that the portal must incur and it is necessary to control compliance related costs if funding portals are to be a success.

The SEC is seeking comment regarding whether or not is should impose "some other requirement" on funding portals, "like insurance or something similar to SIPC." Neither the

Commission nor FINRA should do so. The costs would be too high and the added protection to the investing public minimal.

Sincerely,



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January 27, 2014

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

Dear Ms. Asquith:

Thank you for the opportunity to comment on Regulatory Notice 13-34 on proposed rules for Funding Portals. Wulff, Hansen & Co. is a registered broker/dealer and FINRA member. The writer currently serves on FINRA's Small Firm Advisory Board but the views and comments expressed herein are those of the firm and do not necessarily reflect those of the SFAB.

We commend FINRA for its efforts to craft a regulatory regime that will allow Funding Portal Members to operate without regulatory strictures that are unnecessary or inappropriate for their limited role yet contain reasonable protections for both the public and the issuers of securities.

In general we support most of the Rules as proposed, but believe they are weakened by the lack of a licensing requirement to provide an objective basis for the judgment that an Applicant can comply with the relevant laws and regulations. We also believe that some sort of capital requirement or financial responsibility rule is necessary to protect not only investors but the issuers who will rely on the portals in the process of raising capital. While the Regulatory Notice mentions only protecting investors, issuers using the portals deserve protections as well.

Licensing:
We strongly believe that at least some associated persons of funding portals should be subject to a licensing requirement. Licensing requirements are a fundamental part of carrying out FINRA's mission of protecting the public, both issuers and investors. While funding portals may not sell investments directly, they will play a key role in connecting investors with investments and thus it is reasonable that some of their associated persons should have at least a minimal level of professional qualification. Such a requirement might be applied only to certain senior managerial or supervisory roles, but to have a FINRA member with not a single person who has empirically demonstrated knowledge of the laws and regulations governing that member's business is contrary to any existing practice as well as to common sense.

The requirement that the portal itself must apply for and receive registration with FINRA by meeting certain standards already acknowledges this need: Proposed Funding Portal Rule 110 states in part that one of these standards requires that "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…". Unfortunately, without a licensing requirement the judgment as to whether an FP and its associated persons "are capable" becomes an exercise in subjectivity. Setting specific standards of professional qualification and requiring applicants to demonstrate their knowledge of them by examination avoids such subjectivity and protects both applicants and FINRA from the possibility that persons similarly situated could receive different treatment during the application process.

The proposed Funding Portal Rules also require that FP Members develop and operate a supervisory system designed to ensure their compliance with the relevant laws and regulations. Without some empirical measure of management's understanding of these laws and regulations, how can one reasonably form the belief that they will be capable of creating and enforcing a reliable supervisory system? The first step in supervising activities is to thoroughly understand them, and the current proposal contains no empirical means of demonstrating that an Applicant's staff has such an understanding.

We realize that developing a set of professional qualifications and an appropriate examination takes time. Since the proposed Rules already indicate that qualifications will have to be defined internally by FINRA in order for it to determine that the applicant and its associated persons "are capable of complying…", the only remaining task would be to develop an examination to verify that capacity. If public policy requires that the new portals begin operating without additional delay while the examination is developed, Applicants could be approved on a temporary basis using the subjective standards in the proposed Rule and be required to pass the qualifying examination within a reasonable period of time after it becomes available. We note that the SEC and MSRB are taking a somewhat similar approach to the new registration requirement for Municipal Financial Advisors by allowing them to register and operate now while the MSRB proceeds to develop appropriate professional qualification requirements for future applicants.

We would also support a process by which persons clearly qualified by reason of prior experience or professional qualifications could apply for an exception to the examination requirement. This has been done in the past in connection with other licenses and appears to have worked well.

Financial Responsibility:

The Regulatory Notice asks whether portals should be subject to a financial responsibility requirement. We believe that they should be, and such a requirement is more appropriate for the business of a funding portal than is the proposed fidelity bond requirement. Financial responsibility and net capital requirements exist to protect the public. Given that most current FINRA members are introducing broker/dealers, holding neither funds nor securities on behalf of customers, for those firms the financial responsibility rules are not necessary to protect customer assets since they hold none. Therefore, it appears that their application to non-carrying firms is to ensure that a member firm is unlikely to fail or disappear without warning to FINRA. Why would that consideration not apply to portal Members as well?

As FINRA members, albeit rather limited ones, funding portals should be subject to a system of at least minimal financial oversight in order to provide early warning should the member encounter financial difficulty. Issuers depending on the portal for their capital-raising needs should not be subject to the risk that the portal could disappear overnight, and neither should investors who are accustomed to using the portal to help identify investments.

Such a regime could be very simple and basic since its sole purpose would be to prevent unforeseen and abrupt shutdowns from harming issuers or investors. A portal whose financial filings (perhaps a much-simplified version of the FOCUS) indicated that it was encountering financial distress could be subjected to restrictions similar to those now applying to traditional FINRA members, i.e., a prohibition on taking on new business followed by (if the financial difficulties are not resolved), a reduction in business, an orderly transfer of its business to another portal if one can be found, or an orderly shutdown if that outcome better fits the circumstances.

In short, we believe that FINRA should never be in the position of seeing a FINRA member of any type abruptly close its doors without any prior warning or alarms. To create a situation where such an event is possible would arguably put FINRA in the position of having 'failed to supervise' the portal Member, and would indisputably pose a reputational risk to FINRA itself and to its other member firms. It would shake public confidence in both the funding portals and in FINRA's oversight in general. FINRA membership is a promise to the public that a member firm's demise will be handled in a businesslike manner, and that promise should be kept regardless of the member's business model.

Thank you again for the opportunity to comment.

Sincerely,

Chris Charles
President