

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68633; File No. SR-FINRA-2013-005)

January 11, 2013

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Interim Form for Funding Portals Under the Jumpstart Our Business Startups Act

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 10, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt the Interim Form for Funding Portals (“IFFP”). The IFFP is an online form for prospective intermediaries that intend to apply for membership with FINRA as funding portals (“prospective funding portal members”) pursuant to Title III of the Jumpstart Our Business Startups Act (the “JOBS Act”). FINRA is inviting prospective funding portal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

members, on a voluntary basis, to submit information to FINRA using the IFFP until FINRA and the SEC adopt final rules with respect to registered funding portals.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The JOBS Act⁴ is aimed at increasing American job creation and economic growth and, in furtherance of that aim, contains provisions relating to securities offered or sold pursuant to crowdfunding.⁵ Intermediaries in transactions involving the offer or sale of securities for the account of others pursuant to the crowdfunding exemption must, among other things, register

⁴ Pub. L. No. 112-106, 126 Stat. 306 (2012).

⁵ In general, crowdfunding refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors. The JOBS Act creates an exemption (the “crowdfunding exemption”) from registration under the Securities Act of 1933 (“Securities Act”) for securities offered by issuers pursuant to Title III of the JOBS Act. See Securities Act Section 4(a)(6) (15 U.S.C. § 77d(a)(6)).

with the SEC as a funding portal⁶ or broker and must register with an applicable self-regulatory organization.⁷

The SEC is considering rules to require registration of funding portals and to implement the provisions of the JOBS Act.⁸ FINRA is developing rules that would apply to SEC-registered funding portals that become FINRA members, although the precise nature of FINRA's rules will depend upon the rules that the SEC adopts.⁹ Pending the implementation of these FINRA and SEC rules, FINRA invites prospective funding portal members, on a voluntary basis, to submit information to FINRA using the proposed IFFP.¹⁰ The information that prospective funding portal members would submit using the proposed IFFP would help FINRA to become more familiar with their proposed business models, activities and operations. Further, the requested information will inform FINRA's ongoing development of rules for registered funding portals.

FINRA intends for the information request in the IFFP to be simple for prospective funding portals. For that reason, FINRA has limited the information request to the following items:

- contact and general information about the funding portal;

⁶ The term "funding portal" is defined under Exchange Act Section 3(a)(80) (15 U.S.C. § 78c(80)).

⁷ See Securities Act Section 4A (15 U.S.C. § 77d-1).

⁸ See, e.g., Securities Act Release No. 9354 (August 29, 2012), 77 FR 54464 (September 5, 2012) (Proposed Rule: Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings); see also Spotlight: Jumpstart Our Business Startups Act, available at: <http://www.sec.gov/spotlight/jobs-act.shtml>.

⁹ See Regulatory Notice 12-34 (July 2012).

¹⁰ The IFFP is attached to this filing as Exhibit 3 and is available on the FINRA website at: www.finra.org/fundingportals. Prospective funding portal members would submit their information via a dedicated FINRA email address using the online version of the IFFP on the FINRA website.

- ownership and funding information about the prospective funding portal;
- information about the prospective funding portal's management; and
- information about the funding portal's business relationships, business model and compensation.

FINRA will accord confidential treatment to the information that prospective funding portal members submit on the IFFP.

FINRA may not accept funding portals as FINRA members until the SEC has adopted its registration rules for funding portals and has approved the necessary FINRA rules, including adoption of a final application form for funding portal applicants. FINRA intends to adopt a streamlined membership application process for registered funding portals that reflects the nature of their business. This membership application process may require additional information from prospective funding portal members that voluntarily respond to the IFFP, depending upon the nature of the rules adopted by FINRA and the SEC. FINRA notes that prospective funding portal members are not bound by the responses they indicate on the IFFP and will be permitted to change their responses on the final application form that FINRA adopts.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

¹¹ 15 U.S.C. 78q-3(b)(6).

principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act because collecting information, on a voluntary basis, from prospective funding portal members will assist FINRA in becoming more familiar with the proposed business models, activities and operations of funding portals. Further, the requested information will inform FINRA's efforts to timely develop final rules for registered funding portals with a view to facilitating the JOBS Act goals of job creation and economic growth.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because prospective funding portal members would submit the information requested on the proposed IFFP on a voluntary basis. As noted above, the proposed IFFP will allow FINRA to better understand the proposed business models, activities and operations of prospective funding portal members. FINRA anticipates that the information gathered through the IFFP will better position FINRA to streamline the application process for any prospective funding portal members. Further, the proposed IFFP will inform FINRA's efforts to timely develop final rules for registered funding portals with a view to developing a tailored regulatory approach for such members consistent with the goals of the JOBS Act. FINRA will impose no charge for submission of the proposed IFFP by prospective funding portal members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

FINRA has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants FINRA's request and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the 30-day operative delay will permit FINRA to implement the proposed rule change immediately and thereby facilitate its efforts to collect information, on a voluntary basis, from prospective funding portal members. This will assist FINRA to become more familiar with the proposed business models, activities and operations of funding portals and, further, will inform FINRA's efforts to timely develop final rules for registered funding portals with a view to facilitating the JOBS Act goals of job creation and economic growth. This information will also assist FINRA to propose rules for funding portals that are necessary and appropriate for the protection of investors. For the purposes only of waiving the 30-day operative delay, the Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency,

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2013-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2013-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁴ See 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information

that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).