

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76970; File No. SR-FINRA-2015-040)

January 22, 2016

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt the Funding Portal Rules and Related Forms and Rule 4518

I. Introduction

On October 9, 2015, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the “Funding Portal Rules”) and related forms. In addition, as part of the proposed rule change, FINRA proposes to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) in the FINRA rulebook. The proposed rule change was published for comment in the Federal Register on October 28, 2015.<sup>3</sup> The Commission received three comment letters on the proposed rule change.<sup>4</sup> On December 9, 2015, FINRA extended the time period for Commission action on this proposed rule change until January 26, 2016. On January 21, 2016, FINRA filed

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Act Release No. 76239 (Oct. 28, 2015), 80 FR 66348 (“Notice”).

<sup>4</sup> See letters from Judith Shaw, President, North American Securities Administrators Association, Inc., dated November 19, 2015 (“NASAA Letter”); Hugh D. Berkson, President, Public Investors Arbitration Bar Association, dated November 18, 2015 (“PIABA Letter”); Chris Tyrrell, Chair, CrowdFund Intermediary Regulatory Advocates, dated November 18, 2015 (“CFIRA Letter”).

an amendment to the proposed rule change (“Amendment No. 1”).<sup>5</sup> FINRA responded to the comment letters on January 21, 2016.<sup>6</sup> The Commission is publishing this Notice and Order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Rule Change and Amendment No. 1<sup>7</sup>

On October 30, 2015, the Commission adopted Regulation Crowdfunding,<sup>8</sup> which implements provisions of Title III of the JOBS Act, including those relating to registration and membership requirements of a new type of entity called a funding portal.<sup>9</sup> Pursuant to Section

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<sup>5</sup> See Partial Amendment No. 1, SR-FINRA-2015-040 (Jan. 21, 2016) (“Amendment No. 1”). Amendment No. 1 revised the proposal to include “for purposes of FINRA Rule 8210 any other person listed in Schedule A of Form Funding Portal of a member” to the definition of “associated person of a funding portal member” or “person associated with a funding portal member” in Funding Portal Rule 100(b)(1). See Amendment No. 1 at 3. Amendment No. 1 is available in the public comment file for SR-FINRA-2015-040 on the Commission’s website. Amendment No. 1 also revised the proposal to make certain technical changes to Funding Portal Rules 300(a)(1)(A), 900(a)(4)(C), 900(a)(4)(F), 1200(a)(3), 1200(a)(4) and 1200(b)(4)(C). See Amendment No. 1 at 3-4. These changes are discussed in more detail below.

<sup>6</sup> See letter from Adam Arkel, Associate General Counsel, FINRA, dated January 21, 2016 (“FINRA Letter”).

<sup>7</sup> The Notice contains a more detailed discussion of the rules. In addition, the entire text of the rules, including the amendments, can be found in Exhibit 5 of Amendment No. 1.

<sup>8</sup> See Exchange Act Release No. 76324, 80 FR 71387 (Nov. 16, 2015).

<sup>9</sup> See Securities Act of 1933 (“Securities Act”) Section 4A(a)(1)-(2); Exchange Act Section 3(h)(1)(B). A funding portal is defined in Regulation Crowdfunding as “a broker acting as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), that does not: (i) Offer investment advice or recommendations; (ii) Solicit purchases, sales or offers to buy the securities displayed on its platform; (iii) Compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its platform; or (iv) Hold, manage, possess, or otherwise handle investor funds or securities.” Rule 300(c)(2) of the SEC’s Regulation Crowdfunding. See also Section 3(a)(80) of the Exchange Act.

3(h)(1)(B) of the Exchange Act and Regulation Crowdfunding, funding portals are required to become members of a national securities association registered under Section 15A of the Exchange Act in order to function as intermediaries in certain crowdfunding transactions.<sup>10</sup> In addition, Section 3(h)(2) of the Exchange Act requires that the national securities association only examine for and enforce against registered funding portals rules that the national securities association has written specifically for registered funding portals.<sup>11</sup> Accordingly, FINRA, a national securities association registered under Section 15A of the Exchange Act, proposed Funding Portal Rules 100 (General Standards), 110 (Funding Portal Application), 200 (Funding Portal Conduct), 300 (Funding Portal Compliance), 800 (Investigations and Sanctions), 900 (Code of Procedure) and 1200 (Arbitration and Mediation), as well as Form FP-NMA (for new membership applications), Form FP-CMA (for continuing membership applications), Funding Portal Rule 300(c) Form (for reporting disclosure events as required by Funding Portal Rule 300(c)) and Form FP – Statement of Revenue (for reporting gross revenue as required by Funding Portal Rule 300(e)). FINRA proposed to apply the Funding Portal Rules and related

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<sup>10</sup> See Section 3(h)(1)(B) of the Exchange Act (requiring, as a condition of the exemption from broker registration, that a funding portal be a members of a national securities association that is registered with the Commission under Section 15A of the Exchange Act); Regulation Crowdfunding Rule 300(a)(2) (requiring an intermediary in transactions relying on the crowdfunding exemption to be a member of a national securities association registered under Section 15A of the Exchange Act); Regulation Crowdfunding Rule 400 et seq. (containing the registration requirements for funding portals). See also Securities Act Section 4A(a)(2). FINRA is currently the only registered national securities association.

<sup>11</sup> 15 U.S.C. 78c(h)(2) (“[A] national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.”).

forms to SEC-registered funding portals that become FINRA members.<sup>12</sup> FINRA also proposed to adopt new FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act) to implement notification requirements for FINRA broker-dealer members that engage in certain crowdfunding transactions or enter into control relationships with funding portals.

A. General Standards

Funding Portal Rule 100 sets forth basic standards and definitions for purposes of the Funding Portal Rules. The rule provides that 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.<sup>13</sup> The rule also provides that persons associated with a funding portal member shall have the same duties and obligations as a funding portal member under the Funding Portal Rules. The term “associated person of a funding portal member” or “person associated with a funding portal member” is defined in the rule as “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.”<sup>14</sup>

B. FINRA Membership

Funding Portal Rule 110(a) addresses the membership application process (“MAP”) for

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<sup>12</sup> FINRA separately proposed Section 15 of Schedule A to the FINRA By-Laws governing the fees for funding portals that are FINRA members on October 9, 2015. The proposal became effective upon receipt of the filing by the Commission. See Exchange Act Release No. 76238, 80 FR 66341 (Oct. 28, 2015).

<sup>13</sup> See Funding Portal Rule 100(a).

<sup>14</sup> Funding Portal Rule 100(b)(1).

funding portal applicants (“FP Applicants”).<sup>15</sup>

1. MAP for Initial Membership or Change in Ownership or Control

Funding Portal Rule 110(a)(3)(A) provides that an FP Applicant for FINRA membership must submit its application to FINRA’s Department of Member Regulation (“Department”) by filing a Form FP-NMA<sup>16</sup> in the manner prescribed by FINRA and an application fee. In addition, at the time an FP Applicant for FINRA membership submits its application, 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.<sup>17</sup> 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.

The rule requires a funding portal member to submit its application on Form FP-CMA<sup>18</sup>

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<sup>15</sup> “FP Applicant” is defined as “a person that applies for admission to FINRA as a funding portal member under paragraph (a)(3) of Funding Portal Rule 110 or a funding portal member that files an application for approval of a change in ownership or control under paragraph (a)(4) of the rule.” Funding Portal Rule 110(a)(1)(B).

<sup>16</sup> Form FP-NMA is set forth in Exhibit 3a.

<sup>17</sup> See Funding Portal Rule 110(a)(3)(B). See also 15 U.S.C. 78c(a)(39). Section 3(a)(39) of the Exchange Act sets forth the definition of “statutory disqualification.” Funding Portal Rule 110(a)(1)(A) includes a different definition of “associated person” solely for purposes of the MAP. Under Funding Portal Rule 110(a)(1)(A), “associated person” is defined as “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).”

<sup>18</sup> Form FP-CMA is set forth in Exhibit 3b.

for prior approval of a change:

- 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
- 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.<sup>19</sup>

After receiving an application, the rules provide that FINRA may make requests for additional documents or information and will hold one or more membership interviews.<sup>20</sup> The Funding Portal Rules also provide processes for rejection by FINRA due to an incomplete application,<sup>21</sup> withdrawal of an initial or continued membership application by a FP Applicant,<sup>22</sup> and lapse of application due to certain types of inaction by the FP Applicant.<sup>23</sup>

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<sup>19</sup> See Funding Portal Rule 110(a)(4)(A)-(B).

<sup>20</sup> See Funding Portal Rule 110(a)(6), 110(a)(9). See also Notice, 80 FR at 66351. Under the rules, the membership interview(s) may be conducted by video conference or such other means as FINRA may specify.

<sup>21</sup> See Funding Portal Rule 110(a)(5). See also Notice, 80 FR at 66351.

<sup>22</sup> See Funding Portal Rule 110(a)(7). See also Notice, 80 FR at 66351.

<sup>23</sup> See Funding Portal Rule 110(a)(8). See also Notice, 80 FR at 66351.

## 2. Granting or Denying the Application

Funding Portal Rule 110(a)(10) requires the Department to consider the application for initial membership or change of ownership or control, 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. After considering this information, the Department is required to determine whether the FP Applicant meets each of the following five standards, as applicable:<sup>24</sup>

- 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 is required to take into consideration all information in its possession, including information regarding whether an FP Applicant or its associated persons:<sup>25</sup>
  - is subject to an event described in Section 3(a)(39) of the Exchange Act; and
  - 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-

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<sup>24</sup> According to FINRA, the five standards are streamlined and consolidated in comparison to the 14 standards that apply to broker-dealer applications under NASD Rule 1014(a). FINRA believes that the streamlined, consolidated approach is appropriate to reflect the limited nature of funding portal business. See Notice, 80 FR at 66352, n. 22.

<sup>25</sup> See Funding Portal Rule 110(a)(10)(A).

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.

- 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.<sup>26</sup>
- 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.<sup>27</sup>
- The FP Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.<sup>28</sup>
- The FP Applicant has a recordkeeping system that enables the FP Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements.<sup>29</sup>

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<sup>26</sup> See Funding Portal Rule 110(a)(10)(B).

<sup>27</sup> See Funding Portal Rule 110(a)(10)(C).

<sup>28</sup> See Funding Portal Rule 110(a)(10)(D).

<sup>29</sup> See Funding Portal Rule 110(a)(10)(E).



Under the rules, if the Department determines that the FP Applicant meets each of the applicable standards set forth above, it is required to grant an application for initial membership or change of ownership or control.<sup>30</sup> However, if the Department determines that the FP Applicant does not meet one or more of the applicable standards, the Department is required to deny the application.<sup>31</sup> The rules further provide that the FP Applicant's approval for membership shall be contingent upon the FP Applicant's filing of an executed written membership agreement.

Funding Portal Rule 110(a)(12) requires that the Department serve a written decision on the application for initial membership or change of ownership or control 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, it is required to explain in detail the reason for denial, referencing the applicable standard(s). A funding portal may appeal the Department's decision under the process set forth in Funding Portal Rule 110(a)(13), which is described in more detail in the Notice.<sup>32</sup>

### 3. Application to the SEC for Review

Funding Portal Rule 110(a)(14) provides that a person aggrieved by final action of FINRA under paragraph (a) of the rule may apply for review by the SEC pursuant to Section 19(d)(2) of the Exchange Act.<sup>33</sup> 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.

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<sup>30</sup> See Funding Portal Rule 110(a)(11)(A).

<sup>31</sup> See Funding Portal Rule 110(a)(11)(B).

<sup>32</sup> See Notice, 80 FR at 66352-53.

<sup>33</sup> 15 U.S.C. 78s(d)(2).

#### 4. Filing of Misleading Information as to Membership or Registration

Funding Portal Rule 110(a)(15) provides that 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.

#### C. Funding Portal Conduct

Funding Portal Rule 200(a) is based in large part on FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).<sup>34</sup> The rule provides that a funding portal member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Funding Portal Rule 200(b) is based in large part on FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices).<sup>35</sup> The rule provides that 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.

Funding Portal Rule 200(c) (Communications with the Public) is aimed at prohibiting false and misleading statements.<sup>36</sup> The rule defines the term “funding portal communication” to mean any electronic or other written communication that is distributed or made available by a funding portal member to one or more investors.<sup>37</sup> Paragraph 200(c)(2) of the rule addresses

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<sup>34</sup> See Notice, 80 FR at 66353.

<sup>35</sup> See Notice, 80 FR at 66353.

<sup>36</sup> See Notice, 80 FR at 66353.

<sup>37</sup> See Funding Portal Rule 200(c)(1).

content standards.<sup>38</sup> Paragraph 200(c)(2)(A) of the rule provides that no funding portal communication may:

- include any false, exaggerated, unwarranted, promissory or misleading statement or claim;
- 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; 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
- 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.

Further, paragraph (c)(2)(B) of the rule provides that all funding portal member communications must be based on principles of fair dealing and good faith and must be fair and balanced.<sup>39</sup> In addition, the rule provides that 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.<sup>40</sup> Finally, paragraph 200(c)(3) of the rule addresses issuer communications and provides that the content standards of the rule shall not apply to any communication on the funding portal

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<sup>38</sup> See Funding Portal Rule 200(c)(2).

<sup>39</sup> See Funding Portal Rule 200(c)(2)(B).

<sup>40</sup> See Funding Portal Rule 200(c)(2)(C).

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.<sup>41</sup>

D. Funding Portal Compliance

1. Supervisory System

Funding Portal Rule 300(a) is a streamlined version of FINRA’s supervision rules and is designed to permit funding portal members flexibility to tailor their supervisory systems to their business models.<sup>42</sup> The rule requires that each funding portal member 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.<sup>43</sup> The rule provides that a funding portal member’s supervisory system must provide, at a minimum, for:

- the establishment and maintenance of written procedures to supervise the activities of the funding portal and its associated persons;<sup>44</sup>
- the designation of a person with authority to carry out the supervisory responsibilities of the funding portal member; and
- reasonable efforts to determine that all supervisory personnel are qualified by virtue

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<sup>41</sup> See Funding Portal Rule 200(c)(3).

<sup>42</sup> See Notice, 80 FR at 66354.

<sup>43</sup> See Funding Portal Rule 300(a)(1).

<sup>44</sup> In Amendment No. 1, FINRA is proposing to revise the language in this portion of Rule 300(a)(1) reading “funding portal and its associated persons” to “funding portal member and its associated persons.” See Amendment No. 1 at 3-4.

of experience or training to carry out their assigned responsibilities.

Funding Portal Rule 300(a)(2) provides that a funding portal member must permit the examination and inspection of all of its businesses 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 must cooperate with the examination, inspection or investigation of any persons directly or indirectly using its platform.

## 2. Reporting Requirements

Funding Portal Rule 300(c), which is discussed in further detail in the Notice, requires funding portal members to report to FINRA (and sets forth the obligations of such members' associated persons to report to the member) regulatory proceedings, disciplinary and other events.<sup>45</sup> The rule requires that funding portals 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 the event.<sup>46</sup> The rule is largely based on current FINRA Rule 4530 (Reporting Requirements).<sup>47</sup> The rule indicates that nothing contained in the rule eliminates,

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<sup>45</sup> See Funding Portal Rule 300(c)(1)(A) (discussing the events requiring reporting). See also Notice, 80 FR at 66354-55. Each associated person of a funding portal is also required to promptly report the existence of an event in Rule 300(c)(1)(A) to the funding portal. See Funding Portal Rule 300(c)(3). In addition to the events specified in Rule 300(c)(1)(A), each funding portal member is required to 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. See Funding Portal Rule 300(c)(2). Funding portal members will use the Funding Portal Rule 300(c) Form for their reporting requirements pursuant to the rule. See Funding Portal Rule 300(c) Form.

<sup>46</sup> See Funding Portal Rule 300(c)(1).

<sup>47</sup> See Notice, 80 FR at 66354.

reduces or otherwise abrogates 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.<sup>48</sup> In addition, the rule provides that a funding portal member is not required to report an event otherwise required to be reported under paragraph (c)(1)(A) of the rule if the member discloses the event on SEC Form Funding Portal, consistent with the requirements of that form, or as required pursuant to Funding Portal Rule 800(b)(2), which is discussed in more detail below.<sup>49</sup>

#### 4. Statement of Gross Revenue

Funding Portal Rule 300(e) requires each funding portal member each year to 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.<sup>50</sup> The rule requires that the statement of gross revenue must be prepared in accordance with U.S. Generally Accepted Accounting Principles.

#### 6. Record of Associated Persons of the Funding Portal Member

Funding Portal Rule 300(f) requires each funding portal member to 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

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<sup>48</sup> See Funding Portal Rule 300(c)(4).

<sup>49</sup> See id.

<sup>50</sup> According to FINRA, the Statement of Gross Revenue will be used to determine a funding portal member's annual fees, which FINRA is establishing as part of a separate rulemaking. See supra note 12.

number, if any, to be prescribed by FINRA, and every identification number or code assigned to the associated person by the funding portal member.<sup>51</sup> The rule requires each funding portal member to preserve all records made pursuant to the rule for five years, the first two in an easily accessible place.

FINRA is also proposing in Amendment No. 1 to include for purposes of FINRA Rule 8210 any other person listed in Schedule A of Form Funding Portal of a member to the definition of associated person.<sup>52</sup> FINRA Rule 8210 authorizes it to require associated persons of broker-dealers to provide information and testimony, and to inspect and copy certain books and records, among other things. Adding this language will more closely align the rule to the definition of associated person that it applies to associated persons of broker-dealers. Therefore, FINRA will be able to obtain information and testimony from persons listed in Schedule A of a funding portal's Form Funding Portal in the same manner that it may from persons listed in Schedule A of a broker-dealer's Form BD.<sup>53</sup>

E. Investigations and Sanctions

1. Application of the FINRA Rule 8000 Series (Investigations and Sanctions)

Funding Portal Rule 800(a) is designed to provide that funding portal members will be

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<sup>51</sup> According to FINRA, the rule is based in large part on Exchange Act Rule 17a-3(a)(12)(ii) (17 C.F.R. 240.17a-3(a)(12)(ii)), which requires broker-dealers to make and keep current a record listing every associated person of the broker-dealer. FINRA believes that requiring funding portals to keep such a record is prudent both for supervisory and regulatory oversight purposes. See Notice, 80 FR at 66356.

<sup>52</sup> See supra note 5.

<sup>53</sup> A funding portal is required to list its direct owners and executive officers on Schedule A of Form Funding Portal and, therefore, the amendment will allow FINRA to obtain information and testimony from these persons.

subject to specified FINRA rules governing investigations and sanctions.<sup>54</sup> Specifically, the rule provides that, except for FINRA Rules 8110 (Availability of Manual to Customers), 8211 (Automated Submission of Trading Data Requested by FINRA), 8213 (Automated Submission of Trading Data for Non-Exchange-Listed Securities Requested by FINRA) and 8312 (FINRA BrokerCheck Disclosure),<sup>55</sup> all funding portal members shall be subject to the FINRA Rule 8000 Series, unless the context requires otherwise.<sup>56</sup>

## 2. Public Disclosure of Information on Funding Portals

Funding Portal Rule 800(b) is a streamlined version of FINRA Rule 8312 (FINRA BrokerCheck Disclosure) and addresses specific information that FINRA is required to make available to the public.<sup>57</sup> The rule authorizes FINRA to 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.<sup>58</sup> The rule provides that, with respect to a former funding portal member, FINRA may provide similar access to the public to the former funding portal member's most recent SEC Form Funding Portal, and any amendments and registration withdrawal requests, as filed with the SEC.

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<sup>54</sup> See Notice, 80 FR at 66356.

<sup>55</sup> With respect to FINRA Rule 8312, as discussed below, FINRA proposed Funding Portal Rule 800(b) as a streamlined version of the rule to apply to funding portal members. See Notice, 80 FR at 66356, n. 47.

<sup>56</sup> There are a few additional changes from the Rule 8000 series, which are discussed in the Notice. See Notice, 80 FR at 66356-66357.

<sup>57</sup> See Notice, 80 FR at 66357.

<sup>58</sup> See Funding Portal Rule 800(b)(1).



The rule also requires FINRA to 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.<sup>59</sup> The rule provides that 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.<sup>60</sup>

The rule also provides that, with respect to the information provided pursuant to paragraph (b)(2) of the 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.<sup>61</sup> The rule provides that 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.<sup>62</sup>

#### F. Code of Procedure

##### 1. Application of FINRA Rule 9000 Series (Code of Procedure)

Funding Portal Rule 900(a) is designed to provide that funding portal members will be subject to specified FINRA rules setting forth FINRA's Code of Procedure.<sup>63</sup> Specifically,

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<sup>59</sup> See Funding Portal Rule 800(b)(2).

<sup>60</sup> See Funding Portal Rule 800(b)(2).

<sup>61</sup> See Funding Portal Rule 800(b)(3).

<sup>62</sup> See Funding Portal Rule 800(b)(3).

<sup>63</sup> See Notice, 80 FR at 66357.

except for the FINRA Rule 9520 Series, FINRA Rule 9557, and the FINRA Rule 9700 Series,<sup>64</sup> the rule provides that all funding portal members shall be subject to the FINRA Rule 9000 Series, unless the context requires otherwise. The rule provides that 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:<sup>65</sup>

- failure to timely submit amendments to SEC Form Funding Portal;
- Funding Portal Rule 200(c) (Communications with the Public);
- Funding Portal Rule 300(a) – Failure to maintain adequate written supervisory procedures where the underlying conduct is subject to Rule 9217;<sup>66</sup>
- Funding Portal Rule 300(c) – failure to timely file reports;
- failure to provide or update contact information as required by Funding Portal Rule

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<sup>64</sup> The FINRA Rule 9520 Series addresses “eligibility proceedings” in the context of statutory qualifications which, as discussed further below, FINRA is proposing to address under Funding Portal Rule 900(b). FINRA Rule 9557 addresses service of notice to members that are experiencing financial or operational difficulties under net capital or similar financial responsibility requirements. Because funding portals would not be subject to such requirements, FINRA indicated that Rule 9557 would not be applicable. Similarly, FINRA indicated that it did not propose to apply the Rule 9700 Series to funding portals because the FINRA Rule 9700 Series addresses the automated quotation, execution or communication systems owned or operated by FINRA, which are outside the scope of funding portal business activity. See Notice, 80 FR at 66357.

<sup>65</sup> FINRA Rule 9216(b) sets forth procedures for disposition of specified rule violations designated as minor rule violations pursuant to a plan (referred to as an “MRVP”) declared effective by the SEC in accordance with Exchange Act Section 19(d)(1) (15 U.S.C. 78s(d)(1)) and Rule 19d-1(c)(2) (17 C.F.R. 240.19d-1(c)(2)) thereunder. FINRA Rule 9217 sets forth the rules that are eligible for such disposition. FINRA’s MRVP allows FINRA to impose a fine of up to \$2,500 on any firm it regulates or person associated with a FINRA regulated firm for a minor violation of an eligible rule.

<sup>66</sup> In Amendment No. 1, FINRA proposes to change the “Failure” to “failure” and add “FINRA” before “Rule 9217” in Funding Portal Rule 900(a)(4)(C). See Amendment No. 1 at 4.

300(d);

- Rule 303(f) of SEC Regulation Crowdfunding – Confirmation of Transactions;<sup>67</sup> and
- 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.

The rule also provides that for purposes of FINRA Rule 9551(a),<sup>68</sup> 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).<sup>69</sup> In addition, the rule provides that 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.<sup>70</sup> The rule further provides that for purposes of proceedings pursuant to FINRA Rule 9810(a),<sup>71</sup> proceedings may be initiated with respect to alleged violations of Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and Exchange Act Rule 10b-5 (17 C.F.R. 240.10b-5), Funding Portal Rule 200(a) (if the alleged violation is misuse of investor funds or assets, or based on violations

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<sup>67</sup> In Amendment No. 1, FINRA proposes to change “Confirmation of Transactions” to “confirmation of transactions” in Funding Portal Rule 900(a)(4)(F). See Amendment No. 1 at 4.

<sup>68</sup> FINRA Rule 9551 addresses expedited proceedings by FINRA for failure to comply with public communication standards.

<sup>69</sup> See Funding Portal Rule 900(a)(7).

<sup>70</sup> See Funding Portal Rule 900(a)(8).

<sup>71</sup> FINRA Rule 9810 addresses initiation of cease and desist proceedings by FINRA for specified violations.

of Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and Funding Portal Rule 200(b).<sup>72</sup>

## 2. Eligibility Proceedings

Funding Portal Rule 900(b) is a streamlined version of the current FINRA Rule 9520 Series.<sup>73</sup> The rule 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.

### G. Arbitration and Mediation

Funding Portal Rule 1200(a) provides that funding portal members will be subject to the 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), unless the context requires otherwise.<sup>74</sup> The rule addresses predispute arbitration agreements for investor accounts.<sup>75</sup> The rule provides that any predispute arbitration clause must be highlighted and must 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:

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<sup>72</sup> See Funding Portal Rule 900(a)(9).

<sup>73</sup> See Notice, 80 FR at 66358.

<sup>74</sup> In Amendment No. 1, FINRA is proposing to amend Funding Portal Rules 1200(a)(3) and 1200(a)(4) to add the word “Series” after FINRA Rule 1200. See Amendment No. 1 at 4.

<sup>75</sup> See Notice, 80 FR at 66362. According to FINRA, the rule is a streamlined version of current FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Agreements).

(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.”<sup>76</sup>

Paragraph (b)(2)(A) of the rule provides that, in any agreement containing a predispute arbitration agreement, there must 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 must also indicate at what page and paragraph the

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<sup>76</sup> See Funding Portal Rule 1200(b)(1).

arbitration clause is located. Paragraph (b)(2)(B) provides that, within 30 days of signing, a copy of the agreement containing any such clause must be given to the investor and the funding portal member must retain proof of delivery or of the investor's acknowledgement of receipt.

Paragraph (b)(3)(A) of the rule provides that, within ten business days of receipt of the investor's request, a funding portal member must provide an investor with a copy of any predispute arbitration clause or investor agreement executed between the investor and the funding portal member. Paragraph (b)(3)(B) provides that, upon request by an investor, a funding portal member must 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.

Paragraph (b)(4) of the rule provides that no predispute arbitration agreement shall include any condition that:

- limits or contradicts the rules of any self-regulatory organization;
- limits the ability of a party to file any claim in arbitration;
- 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;<sup>77</sup>
- limits the ability of arbitrators to make any award.

Paragraph (b)(5) of the rule provides that, 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

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<sup>77</sup> In Amendment No. 1, FINRA is proposing to amend Funding Portal Rule 1200(b)(4)(C) to change “may be filed under the agreement;” to “may be filed under the agreement; or”. See Amendment No. 1 at 4.

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.

Paragraph (b)(6) of the rule provides that all agreements must 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.”

#### H. Notification to FINRA in Connection with the JOBS Act

FINRA also proposed new FINRA Rule 4518. The rule, which would apply to registered broker members, provides that a FINRA member shall notify FINRA, in a manner prescribed by FINRA: 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 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.

#### III. Summary of Comment Letters and FINRA’s Response to Comments

Commenters generally supported FINRA’s proposal. As discussed below, some commenters recommended that the proposal be expanded and include additional requirements or explanations in certain aspects. One of these commenters, while not necessarily opposing the proposed rules, also suggested that the Commission reject, and require FINRA to resubmit, the

rule proposal. One commenter, while appreciating FINRA's willingness to address potential issues through subsequent rulemakings, encouraged FINRA to address potential shortfalls now before any investors lose money.<sup>78</sup>

A. Timing

One commenter suggested that FINRA and the public should review and evaluate FINRA's proposed Funding Portal Rules, related forms and Rule 4518 (the broker-dealer crowdfunding notification requirement) in light of Regulation Crowdfunding.<sup>79</sup> The commenter further suggested that the Commission should reject FINRA's rule proposal at this time, require FINRA to resubmit its rules after it has conducted a review and analysis of Regulation Crowdfunding and extend the comment period.<sup>80</sup> FINRA, however, notes that: (1) its proposal has been informed by the Commission's rulemaking;<sup>81</sup> (2) its Funding Portal Rules have been in preparation for a considerable time; and (3) it has received public input.<sup>82</sup> According to FINRA, the proposal is intended to create the means for registered funding portals to become FINRA members and is consistent with the JOBS Act and Regulation Crowdfunding.<sup>83</sup> FINRA further notes that it is important that FINRA should be in a position to timely implement the Funding

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<sup>78</sup> See NASAA Letter at 2.

<sup>79</sup> See PIABA Letter at 2.

<sup>80</sup> Id. at 7.

<sup>81</sup> See FINRA Letter at 2 (citing Notice, 80 FR at 66349).

<sup>82</sup> See id. at 2. FINRA cites, for example, Regulatory Notice 12-34 (July 2012) (FINRA Requests Comment on Proposed Regulation of Crowdfunding Activities) and Regulatory Notice 13-34). FINRA also cites to the discussion in the Notice regarding Regulatory Notice 13-34 and the comments it received for the Regulatory Notice. See id. at 2, n. 9 (citing also to the Notice, 80 FR at 66367).

<sup>83</sup> See id. at 2.



Portal Rules so that funding portals that plan to register with the SEC and seek FINRA membership may avail themselves of Regulation Crowdfunding as it becomes effective.<sup>84</sup>

Finally, FINRA points out that it noted in the proposal that it will consider the merit of future rulemakings as regulators gain more experience with funding portals.<sup>85</sup>

#### B. General Standards

One commenter suggested omitting the language of “unless the context requires otherwise” in proposed Funding Portal Rule 100 regarding the application of FINRA by-Laws and FINRA Regulation By-Laws to funding portal members and their associated persons because the commenter believes it is unclear when the exception will apply.<sup>86</sup> In response, FINRA notes that it intends the phrase “unless the context requires otherwise” to provide clarity and ensure that funding portals will not be subject to terms under the FINRA By-Laws and FINRA Regulation By-Laws that could not relate to them by virtue of their distinct status and limited permissible business activities under the JOBS Act and Regulation Crowdfunding.<sup>87</sup> FINRA also notes that the phrase is used in other portions in the FINRA rulebook, such as FINRA Rule

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<sup>84</sup> Id. at 3.

<sup>85</sup> See id. at 3. See also Notice, 80 FR at 66349 and 66369.

<sup>86</sup> See PIABA Letter at 2. The commenter also noted that similar limiting language referencing “context” is unclear in several other places in the rules, but did not identify any specific rules. See id.

<sup>87</sup> FINRA Letter at 3.

0160(b),<sup>88</sup> and that it is not aware of any ambiguity that has arisen from the use of the phrase.<sup>89</sup> Finally, FINRA indicates that it is open to further discussion of any specific interpretive issues.<sup>90</sup>

### C. Definition of Associated Person

As described above, Funding Portal Rule 110(a)(1)(A) includes a different definition of associated person solely for purposes of the MAP, which excludes persons whose functions are solely clerical or ministerial.<sup>91</sup> One commenter suggested the exception for such persons from the definition of “associated person” should be extended to the rest of the funding portal rules (i.e., the definition in Funding Portal Rule 100(b)(1) under the General Standards).<sup>92</sup> The commenter noted that employees that are not listed as associated persons in the funding portal’s membership application will become associated persons once FINRA approves the funding portal for membership.<sup>93</sup>

In response, FINRA notes that the two different definitions of associated person in the rules are tailored to different purposes.<sup>94</sup> FINRA indicates that the language in Funding Portal Rule 110(a)(1)(A) excepting persons that have “solely clerical and ministerial” functions is based on longstanding usage under NASD Rule 1011(b), which sets forth the definition of “associated

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<sup>88</sup> FINRA Rule 0160(b) sets forth definitions for the FINRA Rules.

<sup>89</sup> See FINRA Letter at 3-4.

<sup>90</sup> See id. at 4.

<sup>91</sup> See supra note 17.

<sup>92</sup> See CFIRA Letter at 2.

<sup>93</sup> See id.

<sup>94</sup> See FINRA Letter at 4.

person” for purposes of membership proceedings for broker-dealers.<sup>95</sup> According to FINRA, the definition of “associated person” in Rule 110(a)(1)(A) will perform a similar function for funding portals applying for FINRA membership.<sup>96</sup> FINRA points out that it noted in the proposal that Funding Portal Rule 110(a) is intended to be based on the current broker-dealer membership rules, but FINRA simplified the MAP for funding portals to reflect the limited nature of their businesses.<sup>97</sup>

FINRA further notes that, in contrast, it intended the definition under Funding Portal Rule 100(b)(1) to be for general application to funding portal members, in a similar manner to the definition of associated persons of broker-dealers under paragraph (rr) under Article I of the FINRA By-Laws.<sup>98</sup> According to FINRA, the purpose of the general definition of associated person in Funding Portal Rule 100(b)(1) is to ensure that all associated persons of the funding portal are subject to the regulatory framework.<sup>99</sup>

#### D. Fidelity Bond

As discussed in the Notice, FINRA has determined not to propose at this time a fidelity bond requirement for funding portals.<sup>100</sup> One commenter conveyed its support for FINRA’s

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<sup>95</sup> See id. at 4-5 (citing Securities Exchange Act Release No. 48969 (December 22, 2003), 68 FR 75681 (December 31, 2003) (Notice of Order Granting Approval of Proposed Rule Change; File No. SR-NASD-2003-007)).

<sup>96</sup> See FINRA Letter at 5.

<sup>97</sup> See id. See also Notice, 80 FR at 66350.

<sup>98</sup> See FINRA Letter at 5.

<sup>99</sup> See id.

<sup>100</sup> See Notice, 80 FR 66348, 66349.

approach.<sup>101</sup> Two commenters, however, suggested including a fidelity bond requirement for funding portals.<sup>102</sup> One commenter stated its view that there is “minimal regulation of associated persons working for funding portals” and that a fidelity bond would protect funding portals against potential losses due to acts of the employees.<sup>103</sup> The commenter further stated its view that a streamlined fidelity bond requirement that accounts for a funding portal’s limited scope of activity is an economically feasible alternative given the risk that will otherwise exist for funding portals.<sup>104</sup> Another commenter suggested that, in light of a funding portal’s responsibilities and potential liability, it would be “prudent” for a funding portal to be required to have fidelity bond (or some other type) of insurance.<sup>105</sup>

In response, FINRA indicates that it is not proposing a fidelity bond at this time, stating that as discussed in the proposal, it believes that this approach is appropriate in the interest of reducing potential burdens on prospective funding portal members given the limited nature of funding portal business and given that regulatory experience with funding portals is

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<sup>101</sup> See CFIRA Letter at 1. That commenter also indicated that the new member application for funding portals still includes a provision to attach the bond. However, the Form FP-NMA, as proposed by FINRA, does not include such a requirement. See Exhibit 3a of the proposal.

<sup>102</sup> See NASAA Letter at 5; PIABA Letter at 3.

<sup>103</sup> See NASAA Letter at 5. The commenter also noted that funding portals will not be members of the Securities Investor Protection Corporation (“SIPC”) and that their customers will not receive SIPC protection. See id.

<sup>104</sup> Id.

<sup>105</sup> See PIABA Letter at 3. In addition, the commenter suggested that funding portals should be required to clearly disclose to investors what the bond does and does not cover. Id. The commenter also suggested that the Commission should impose a fidelity bond requirement on funding portals and issuers. Id. at n. 5.

developing.<sup>106</sup> FINRA also notes that the Commission considered and determined not to adopt a fidelity bond requirement for funding portals when it adopted Regulation Crowdfunding.<sup>107</sup> FINRA indicates that it has determined to monitor the development of the funding portal business and determine whether future rulemaking regarding fidelity bonds or other financial responsibility requirements is merited.<sup>108</sup>

#### E. Communications with the Public

FINRA indicates that it noted in the proposal that the proposed rule is a streamlined version of FINRA Rule 2210 (Communications with the Public) and is aimed at prohibiting false and misleading statements.<sup>109</sup> One commenter suggested that Funding Portal Rule 200 should include a requirement that funding portal member communications provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry or service, which is language that FINRA had originally proposed in Regulatory Notice 13-34.<sup>110</sup> In response, FINRA notes that the rule reflects the limited scope of activity permitted to funding portals.<sup>111</sup> Although FINRA had originally included the language suggested by the commenter in Regulatory Notice 13-34, it indicates that, upon further consideration, it determined not to include such language in the proposal because it believes the language could potentially suggest

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<sup>106</sup> See id. at 5-6 (citing Notice, 80 FR at 66349, 66367).

<sup>107</sup> See FINRA Letter at 6 (citing language in the Commission's adopting release). See also Crowdfunding, Exchange Act Release No. 76324, 80 FR 71388, 71458 (Nov. 16, 2015).

<sup>108</sup> See FINRA Letter at 6; Notice, 80 FR at 66349, n. 14 and 66367, n. 86.

<sup>109</sup> See FINRA Letter at 6.

<sup>110</sup> See PIABA Letter at 4. See also Regulatory Notice 13-34 (Oct. 2013) (FINRA Requests Comment on Proposed Funding Portal Rules and Related Forms).

<sup>111</sup> See FINRA Letter at 6-7.

the activity of offering investment advice or recommendations to investors, which is prohibited as a funding portal business activity.<sup>112</sup>

#### F. Reporting Requirements

One commenter suggested that funding portals should be required to report misconduct in 10 days rather than 30 days as proposed under Funding Portal Rules 300(c)(1) and 300 (c)(2).<sup>113</sup> The commenter also suggested that Funding Portal Rule 300(c)(1)(A)(ii) should be revised to align with FINRA Rule 4530(a)(1)(B), which requires that a broker-dealer member report to FINRA when it or one of its associated persons “is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery.”<sup>114</sup> Funding Portal Rule 300(c)(1)(A)(ii), as proposed, would require a funding portal to report when the funding portal member or an associated person of the funding portal member “is subject to any written complaint involving allegations of fraudulent conduct or misuse or misappropriation of funds or assets.”<sup>115</sup> The commenter further suggested that funding portals members, like broker-dealer members, should be required to (1) report quarterly statistical and summary information related to written customer complaints and (2) provide copies of source documents for the reportable information.<sup>116</sup>

In response, FINRA indicates that the 30 calendar day requirement, which is consistent with the corresponding requirement for broker-dealer members under FINRA Rule 4530, strikes

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<sup>112</sup> See id. at 7.

<sup>113</sup> See PIABA Letter at 4.

<sup>114</sup> See id. at 4-5. See also FINRA Rule 4530(a)(1)(B).

<sup>115</sup> See Funding Portal Rule 300(c)(1)(A)(ii).

<sup>116</sup> See PIABA Letter at 5. See also FINRA Rule 4530(d) and (f).

the appropriate balance between prompt regulatory reporting for purpose of risk oversight and providing firms sufficient time to assess reportable events and submit complete and accurate reports.<sup>117</sup> FINRA also notes that funding portal’s permissible business activities are limited in scope relative to other FINRA members.<sup>118</sup> In addition, FINRA notes that funding portal members would have a shorter amount of time to report statutory disqualification events under Rules 110(a)(3)(B) and 800(b)(2) because of the significant regulatory implications of such events as compared to other reportable events.<sup>119</sup>

In response to the comment about the types of written complaints that should be reported, FINRA notes its belief that the rule is consistent with its goal of tailoring the rule language to the limited permissible activities in which funding portals may engage.<sup>120</sup> FINRA states that it does not believe it is necessary to single out theft and forgery for purposes of this particular provision, especially given that funding portals are prohibited in the first place from holding, managing, possessing or otherwise handling investor funds or securities.<sup>121</sup> However, FINRA also noted its belief that the language of Funding Portal Rule 300(c)(1)(A)(ii) is sufficiently broad to encompass such fraudulent conduct, or misuse or misappropriation of funds or assets, as would

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<sup>117</sup> See FINRA Letter at 7.

<sup>118</sup> See id. at 8.

<sup>119</sup> See id. Both rules, which are discussed above, require funding portals to update information about statutory disqualification events “promptly, but in any event not later than 10 days following any change in such information.” See Funding Portal Rules 110(a)(3)(B) and 800(b)(2).

<sup>120</sup> See FINRA Letter at 8.

<sup>121</sup> See id.

be involved in an act of theft or forgery.<sup>122</sup> FINRA also indicates that the rule is broader than FINRA Rule 4530(a)(1)(B) – the rule specifies “any written complaint” rather than “any written customer complaint.”<sup>123</sup> In response to the commenter’s other suggestions regarding requirements for statistical and summary information, and the filing of copies of the specified documents, FINRA cites to the proposal where it noted its intent to minimize the initial potential costs and burdens to the development of the funding portal business.<sup>124</sup> FINRA, however, indicates that it may revisit this issue in a future rulemaking after regulators gain more experience in connection with funding portals.<sup>125</sup>

#### G. Disclosure

As discussed in more detail above, Funding Portal Rule 800(b)(1) will allow FINRA to provide the public with access to a funding portal member’s current SEC Form Funding Portal, including amendments and registration withdrawal requests via a link to the Commission’s website. One commenter expressed concern about the permissive nature of Funding Portal Rule 800(b)(1).<sup>126</sup> The commenter suggested that the proposed rules should require that FINRA provide investors with most (if not all) of the information required to be submitted to FINRA under Funding Portal Rule 300(c).<sup>127</sup> In response, FINRA notes that it intends to exercise its authority under Funding Portal Rule 800(b)(1), which it states is designed to provide FINRA

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<sup>122</sup> See id.

<sup>123</sup> See id.

<sup>124</sup> See id. (citing the Notice, 80 FR at 66363).

<sup>125</sup> See id.

<sup>126</sup> See PIABA Letter at 6.

<sup>127</sup> See id.



sufficient flexibility as to carrying out the specified disclosures.<sup>128</sup> FINRA also notes that Funding Portal Rule 800(b)(2), which is discussed in more detail above, requires FINRA to make public information 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 (i.e., a statutory disqualification event).<sup>129</sup>

#### H. Central Registration Depository (“CRD”)

One commenter suggested that funding portals should be required to use CRD to register and make ongoing disclosures.<sup>130</sup> The commenter stated its view that mandatory use of CRD by funding portals would create a central location for regulators to easily access information about the portals at a reasonable expense to the entities.<sup>131</sup> The commenter also expressed concern about whether information about funding portals and their associated persons would be made available to the public or other regulators.<sup>132</sup> Another commenter, however, supported the decision not to use CRD, stating its view that the system is excessively complex for the limited scope of activity of funding portals, and using alternative systems will likely lead to compliance cost savings for portals.<sup>133</sup>

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<sup>128</sup> See FINRA Letter at 12.

<sup>129</sup> See id.

<sup>130</sup> See NASAA Letter at 2. Broker-dealers register using CRD.

<sup>131</sup> See id. at 2.

<sup>132</sup> See id. at 3.

<sup>133</sup> CFIRA Letter at 2.

In response, FINRA indicates that it is not at this time requiring funding portals to use CRD.<sup>134</sup> FINRA notes that the rules provide for the submission of certain information by funding portals in a manner and format prescribed by FINRA.<sup>135</sup> FINRA indicates that it is developing systems for the submission of such information and it believes the systems will be appropriate to the limited permissible activities of funding portals.<sup>136</sup>

#### I. Licensing and Examination

FINRA has not included any licensing or examination requirements in its Funding Portal Rules. One commenter expressed support for this approach, noting its belief that such an approach would result in cost savings for funding portals and would likely lead to greater flexibility and innovation in the roles and responsibilities of funding portal operators and employees.<sup>137</sup> Two commenters, however, suggested licensing requirements for associated persons of funding portals.<sup>138</sup> One of these commenters suggested licensing requirements for all associated persons of funding portals or, at a minimum, licensing requirements for any person with specific responsibilities under the funding portal rules, such as supervisory or compliance

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<sup>134</sup> See FINRA Letter at 9.

<sup>135</sup> See id. For example, FINRA notes the requirements under Funding Portal Rules 110(a)(3)(A), 110(a)(4)(B) and 800(b), which are described in more detail above. See id. See also Notice, 80 FR at 66368.

<sup>136</sup> See FINRA Letter at 9.

<sup>137</sup> See CFIRA Letter at 2.

<sup>138</sup> See PIABA Letter at 3, n. 4; NASAA Letter at 3.

personnel.<sup>139</sup> The other commenter suggested that compliance personnel should be required to pass a licensing test.<sup>140</sup>

In response, FINRA notes that it will consider whether additional rulemaking with respect to examination and licensing requirements is needed as it gains experience regulating funding portals.<sup>141</sup>

#### J. Suspicious Activity Reporting

Broker-dealers registered or required to be registered with the Commission are required to comply with anti-money laundering (“AML”) regulations promulgated by the Department of Treasury under the Bank Secrecy Act (“BSA”),<sup>142</sup> including a requirement to file suspicious activity reports with the Financial Crimes Enforcement Network (“FinCEN”).<sup>143</sup> FINRA requires its broker-dealer members to develop and implement AML programs reasonably designed to achieve and monitor their compliance with the requirements of the BSA and the Department of Treasury’s implementing regulations thereunder, including a requirement to file suspicious activity reports.<sup>144</sup> One commenter suggested that funding portals should also be

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<sup>139</sup> See NASAA Letter at 3.

<sup>140</sup> See PIABA Letter at 3, n. 4.

<sup>141</sup> See FINRA Letter at 9. See also Notice, 80 FR at 66368.

<sup>142</sup> 31 CFR Chapter X. See also 31 CFR 1023.100 (“*Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11).”).

<sup>143</sup> See 31 CFR 1023.320.

<sup>144</sup> See FINRA Rule 3310.

subject to suspicious activity reporting requirements.<sup>145</sup> In response, FINRA indicates that it noted in its proposal that the BSA and its implementing regulations do not currently apply to funding portals.<sup>146</sup> FINRA, therefore, indicates that it is not imposing a requirement at this time for funding portals to develop and implement an AML program, pending further action by the primary regulators in this area.<sup>147</sup>

#### K. Arbitration and Mediation

Two commenters suggested that crowdfunding investors should be able to opt out of arbitration agreements and pursue their claims in court.<sup>148</sup> The commenters also expressed concern with investors having to bring claims in multiple forums against funding portals and issuers.<sup>149</sup> One commenter suggested that if investors are not provided the right to choose their

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<sup>145</sup> See NASAA Letter at 5.

<sup>146</sup> See FINRA Letter at 11 (citing Notice, 80 FR at 66349).

<sup>147</sup> See id. at 12. See also Crowdfunding, Exchange Act Release No. 76324, 80 FR 71378, 71471, n. 1098 (Nov. 16, 2015) (“FinCEN within the Department of Treasury has primary regulatory responsibility for administering the BSA. We note that FinCEN has included in the Unified Agenda and Regulatory Plan an item that states: “FinCEN . . . is proposing amendments to the regulatory definitions of ‘broker or dealer in securities’ under the regulations implementing the Bank Secrecy Act. The proposed changes are intended to expand the current scope of the definitions to include funding portals. In addition, these amendments would require funding portals to implement policies and procedures reasonably designed to achieve compliance with all of the Bank Secrecy Act requirements that are currently applicable to brokers or dealers in securities.”) (citing Office of Mgmt. & Budget, Exec. Office of the President, Office of Info. & Regulatory Affairs, Amendments of the Definition of Broker or Dealer in Securities, RIN 1506-AB29, *available at* <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=1506-AB29>).

<sup>148</sup> See PIABA Letter at 6; NASAA Letter at 4.

<sup>149</sup> See PIABA Letter at 7 (suggesting that an investor should be permitted to include claims against funding portal members and issuers in the same FINRA arbitration); NASAA Letter at 4 (expressing concern that investors wishing to bring claims against a funding

forum, at a minimum, FINRA should bar arbitration agreements that would preclude an investor from joining a class action against a funding portal member.<sup>150</sup> Another commenter, however, generally supported proposed Rule 1200.<sup>151</sup>

In response, FINRA notes that the purpose of Funding Portal Rule 1200 is to ensure in part that funding portal members shall be subject to the existing rules in this area, unless the context requires otherwise.<sup>152</sup> FINRA also expresses its belief that the proffered changes to the arbitration rules raise issues for the securities industry in general that are beyond the scope of the proposal.<sup>153</sup> Finally, FINRA states that as to the current rules in this area, FINRA has previously noted that investors experience substantial savings in arbitration compared to litigation and that the benefits and cost savings of arbitration make filing an arbitration claim a less costly option for investors.<sup>154</sup>

#### L. Application of Additional Rules

One commenter suggested that the following conduct rules for FINRA's broker-dealer members should be applied to funding portal members: the prohibition against guarantees and sharing in accounts under FINRA Rule 2150 (Improper Use of Customers' Securities or Funds;

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portal member and issuer will have to bring the related claims in separate forums if a funding portal uses a pre-dispute arbitration agreement).

<sup>150</sup> See PIABA Letter at 7.

<sup>151</sup> See CFIRA Letter at 2.

<sup>152</sup> See FINRA Letter at 13. See also Notice, 80 FR at 66369.

<sup>153</sup> See id.

<sup>154</sup> See id. (citing Exchange Act Release No. 73245 (September 29, 2014), 79 FR 59876 (October 3, 2014) (Order Approving Proposed Rule Change; File No. SR-FINRA-2014-026).

Prohibition Against Guarantees and Sharing in Accounts); Rule 2210 (Communications with the Public); Rule 3220 (Influencing or Rewarding Employees of Others); Rule 3240 (Borrowing From or Lending to Customers); Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security); and Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements).<sup>155</sup> The commenter also acknowledged that FINRA may not want to duplicate the recordkeeping rule under Rule 404 of Regulation Crowdfunding, but suggested that FINRA should “reiterate the importance of sound recordkeeping practices” of funding portals.<sup>156</sup>

In response, FINRA notes that it sought to streamline the Funding Portal Rules to the extent possible to reflect the limited scope of permissible funding portal activities while also maintaining investor protection.<sup>157</sup> FINRA further notes that its Funding Portal Rules include

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<sup>155</sup> See NASAA Letter at 4. The commenter also suggested that FINRA Rule 2210 (Communications with the Public) should be applied to funding portals. See *id.* As explained in further detail above, FINRA indicates that Funding Portal Rule 200 is a streamlined version of FINRA Rule 2210 that reflects the limited scope of activity permitted to funding portals.

<sup>156</sup> See NASAA Letter at 5.

<sup>157</sup> See FINRA Letter at 10. See also Notice, 80 FR at 66368. FINRA also indicates that it is not proposing to apply to funding portals, at this time, certain rules based on its belief that they do not appear to be tailored to the limited activities of such entities. As an example, FINRA cites FINRA Rule 4370, which contains business continuity plan (“BCP”) requirements for its broker-dealer members. According to FINRA, it is not requiring a funding portal to maintain a BCP, given that, among other things, a funding portal may not hold, manage possess or otherwise handle investor funds or securities. FINRA, however, stated that it:

recognizes that funding portals are Internet-based businesses and, as part of FINRA’s membership application process, [it] will request access to a funding portal’s platform; [FINRA] will also monitor, as part of FINRA’s examination and surveillance process, the development of funding portal business to identify emergency or business disruptions at funding portal members that affect the ability of the members to meet their existing obligations to investors and issuers or for investors to access their securities

rules to address fraud and standards of commercial honor and just and equitable principles of trade (Funding Portal Rules 200(a) and 200(b), which are explained in more detail above).<sup>158</sup> In addition, FINRA notes that Regulation Crowdfunding contains rules to address investor protection.<sup>159</sup> FINRA believes that Regulation Crowdfunding and FINRA's Funding Portal Rules, in combination, are robust enough to address a wide range of potential concerns that may arise from conduct by funding portals.<sup>160</sup> As an example, FINRA indicates that, depending on the facts, it may apply Funding Portal Rule 200(a) in situations in which a funding portal charged a commission or fee that is clearly unreasonable under the circumstances.<sup>161</sup> FINRA further notes that it will enforce the rules for funding portals under Regulation Crowdfunding and that it does not intend for its rules to duplicate Regulation Crowdfunding.<sup>162</sup> FINRA also indicates that it may impose additional requirements on funding portals in the future should FINRA determine that such requirements are merited based on the development of funding portal business under applicable rules.<sup>163</sup>

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positions. These efforts will assist in assessing whether additional rulemaking in this area is required.

See id. FINRA Letter at 10, n. 34.

<sup>158</sup> See FINRA Letter at 10-11.

<sup>159</sup> See id. at 11.

<sup>160</sup> See id.

<sup>161</sup> See id.

<sup>162</sup> See FINRA Letter at 10. See also Notice, 80 FR at 66368-66369.

<sup>163</sup> See FINRA Letter at 11.

#### M. FINRA Manual

One commenter suggested FINRA should require funding portals to make a current copy of the FINRA Manual available to customers for examination, which it requires of broker-dealers members.<sup>164</sup> In response, FINRA notes that it is seeking to streamline the requirements for funding portals and, therefore, not proposing to apply this requirement to such entities.<sup>165</sup> FINRA indicates, however, that any approved Funding Portal Rules will be fully available on the FINRA website for public access.<sup>166</sup>

#### N. Broker-Dealers: Rule 4518

One commenter requested additional guidance regarding Rule 4518, which as discussed in more detail above, requires broker-dealers members to provide a notification to FINRA prior to engaging in certain crowdfunding transactions or within 30 days of entering into certain control relationships with a funding portal.<sup>167</sup> In response, FINRA indicates that it will issue a Regulatory Notice providing further guidance in this area.<sup>168</sup>

#### O. Private Placements

One commenter requested guidance regarding whether offerings relying on the exemption under Section 4(a)(6) will be subject to the filing requirements of FINRA Rule

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<sup>164</sup> See PIABA Letter at 5-6.

<sup>165</sup> See FINRA Letter at 14.

<sup>166</sup> See id.

<sup>167</sup> See CFIRA Letter at 3.

<sup>168</sup> See FINRA Letter at 13.



5123.<sup>169</sup> In response, FINRA states that it will not require that members selling securities in such offerings to submit filings pursuant to FINRA Rule 5123.<sup>170</sup>

#### IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>171</sup> Specifically, the Commission finds that the rule change is consistent with Section 15A(b)(6) of the Exchange Act,<sup>172</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission received three comment letters and FINRA's response to the comment letters. The Commission notes the commenters were generally supportive of the proposal but had suggestions regarding areas where certain aspects of the proposal could be expanded or further explained. The Commission has considered the commenters' suggestions and believes

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<sup>169</sup> See CFIRA Letter at 3.

<sup>170</sup> See FINRA Letter at 13. FINRA cites to its Private Placement Frequently Asked Questions (FAQ), *available at* <http://www.finra.org/industry/faq-private-placement-frequently-asked-questions-faq>. ("FINRA will not require member firms that participate in crowdfunding offerings (under the JOBS Act) to make a filing pursuant to Rule 5123.").

<sup>171</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>172</sup> 15 U.S.C. 78o-3(b)(6).

that FINRA has responded adequately to their concerns and that the rules are consistent with the Exchange Act.

As discussed above, some commenters expressed concern that FINRA has determined not to impose certain requirements that it imposes on its broker-dealer members to funding portal members.<sup>173</sup> Although one of these commenters suggested additions to FINRA's funding portal rules, it also indicated that it generally supported the proposed rules because it "knows that investors need protection against unscrupulous brokers, issuers and intermediaries in the crowdfunding space."<sup>174</sup> In addition, FINRA indicated that the rules have been tailored to reflect the limited scope of permissible activities in which funding portals may engage, while also maintaining investor protection.<sup>175</sup>

Taking into consideration the comments and FINRA's response, we believe that the proposal is consistent with the Exchange Act. In particular, we believe that the Funding Portal Rules are appropriately designed to take into account the limited permissible activities of funding portals, while still maintaining investor protection. We believe that FINRA's response, as discussed in more detail above, appropriately addressed the reasons for not including certain requirements in the proposal. We note that FINRA, in its response, indicates that Rule 200(a), which requires funding portal members to observe high standards of commercial honor and just

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<sup>173</sup> For example, FINRA determined not to include a fidelity bond or any AML requirements for funding portal members in the proposal despite the fact that it had proposed such requirements in its initial Regulatory Notice to its members. FINRA also determined not to include licensing or examination requirements and to include a streamlined version of its communications with the public requirements.

<sup>174</sup> See PIABA Letter at 2. See also CFIRA Letter at 1 (supporting certain changes that FINRA made from the Regulatory Notice as "reflect[ing] the reality that funding portals will have limited permissible activities, and these changes are in line with creating a cost-efficient marketplace for small securities offerings.").

<sup>175</sup> See FINRA Letter at 1 (citing Notice, 80 FR at 66349).

and equitable principles of trade in the conduct of their business, and Rule 200(b), which prohibits the use of manipulative, deceptive or other fraudulent devices, may be used to address misconduct by funding portals not specifically addressed in the rules. We also note that FINRA has represented that it will monitor how the funding portal business develops under the rules as well as other rules applicable to such entities, and assess whether changes to the rules are appropriate or necessary. Taken together, we believe that this approach is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act.

The Commission also believes that FINRA's response, which is discussed in more detail above, appropriately addressed the commenter's concern regarding the timing of the proposal. In particular, FINRA notes that its rules have been in preparation for a considerable amount of time with public input, and the proposal is intended to provide the means for funding portals to become FINRA members consistent with the JOBS Act and Regulation Crowdfunding.<sup>176</sup>

In addition, the Commission also believes that the proposal is designed to provide for an appropriate amount of information to be reported to FINRA. FINRA stated that its goal is to develop rules for funding portal members that are tailored to the limited permissible activities in which funding portals may engage, and to minimize the initial potential costs and burdens to the development of the funding portal business. The Commission believes that FINRA's reporting rules are tailored to funding portal activities. For example, FINRA's Funding Portal Rule 300(c) requires funding portal members to report regulatory proceedings, disciplinary and other events.<sup>177</sup> The rule also requires funding portal members to respond to FINRA with respect to

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<sup>176</sup> See FINRA Letter at 2.

<sup>177</sup> See Funding Portal Rule 300(c).

any investor complaint, examination or inquiry,<sup>178</sup> and states that a funding portal's reporting obligations under SEC rules are not abrogated by the FINRA rules. In addition, the rule contains a 30 calendar day reporting requirement, which FINRA believes strikes the appropriate balance between prompt regulatory reporting for purpose of risk oversight and providing firms sufficient time to assess reportable events and submit complete and accurate reports. The Commission believes FINRA's reporting obligations for funding portal members are appropriate because a funding portal's permissible business activities are limited in scope.

Further, the Commission believes that the proposal is designed to provide for an appropriate level of public disclosure of information relating to funding portals. The Commission notes that FINRA indicates that it intends to exercise its authority under its rules and provide the public with access to a funding portal member's current SEC Form Funding Portal through a link to the Commission's website. Form Funding Portal, which is also publicly available through the Commission's EDGAR system, provides certain disclosure information about funding portals and their associated persons. In addition, FINRA stated its intention to make public information indicating whether the funding portal member or any associated person of the funding portal member is subject to a statutory disqualification event.

Accordingly, the Commission believes that the rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>179</sup>

For the reasons stated above, the Commission finds that the rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules and regulations thereunder.

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<sup>178</sup> See Funding Portal Rule 300(c)(4).

<sup>179</sup> See 15 U.S.C. 78o-3(b)(6).

V. Accelerated Approval of Proposal, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act<sup>180</sup> for approving the proposal, as modified by Amendment No. 1, prior to the 30th day after publication of Amendment No. 1 in the Federal Register.

Amendment No. 1 revised the proposal to include “for purposes of FINRA Rule 8210 any other person listed in Schedule A of Form Funding Portal of a member” to the definition of “associated person of a funding portal member” or “person associated with a funding portal member” in Funding Portal Rule 100(b)(1). This change will help to ensure that FINRA is capable of using its Rule 8210 authority with regard to key persons controlling the funding portal. The Commission also believes the amendment is consistent with FINRA’s obligation in Section 19(g) of the Exchange Act to effectively enforce its rules. The Commission also believes that Amendment No. 1’s amended definition of associated person does not raise any novel regulatory issues because the change more closely aligns the definition with the definition of associated person applicable to FINRA’s broker-dealer members.

Amendment No. 1 also revised the proposal to make technical changes to the language of Funding Portal Rules 300(a)(1)(A), 900(a)(4)(C), 900(a)(4)(F), 1200(a)(3), 1200(a)(4) and 1200(b)(4)(C). The Commission does not believe that these changes raise any novel regulatory issues, but rather are technical changes that do not change the substance of the rules.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

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<sup>180</sup> See 15 U.S.C. 78s(b)(2).

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the rule change, as modified by Amendment No. 1, 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-040 on the subject line.

### Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 rule change that are filed with the Commission, and all written communications relating to the 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 10:00 a.m. and 3:00 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-2015-040, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>181</sup> that the rule change (SR-FINRA-2015-040), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>182</sup>

Robert W. Errett  
Deputy Secretary

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<sup>181</sup> 15 U.S.C. 78s(b)(2).

<sup>182</sup> 17 CFR 200.30-3(a)(12).