

FINRA Issues Voluntary Interim Form for Crowdfunding Portals

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On January 10, 2013, the Financial Industry Regulatory Authority (“FINRA”) **announced** that it is inviting prospective crowdfunding funding portals to voluntarily submit information to FINRA about their proposed business models, activities and operations. According to FINRA, the purpose of the information collection is to help FINRA become more familiar with the funding portal community and to assist it in developing rules specific to funding portals.

Regulation of Intermediaries Involved in Crowdfunding Transactions

The **Jumpstart Our Business Startups Act** (the “**JOBS Act**”) provides that an intermediary involved in a “crowdfunding” transaction must be registered with the SEC either as a broker-dealer or “funding portal.” “Crowdfunding” generally 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 defines a “funding portal” as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others solely pursuant to the new crowdfunding exemption from the registration requirements of Section 5 of the Securities Act added by the JOBS Act. Funding portals, like broker-dealers, must become members of a national securities association (i.e., FINRA). The JOBS Act imposes a number of restrictions on funding portals, including, for example, a prohibition on soliciting offers or transactions and a bar on compensating employees, agents, or other persons for solicitations or based on the sale of securities.¹

The JOBS Act requires the SEC and FINRA, as the only current national securities association, to write new rules to implement the crowdfunding provisions of the JOBS Act, including rules addressing the form and process for the registration of funding portals. Until the SEC and FINRA finalize such rules, funding portals cannot legally act as crowdfunding intermediaries.

The crowdfunding provisions of the JOBS Act have proved controversial: investor advocates have called for tight restrictions to prevent fraud and abuse, while supporters of crowdfunding have expressed frustration over the implementation delays that they view as undermining the goals of the new law.

Voluntary Submission of Information to FINRA

Although neither FINRA nor the SEC has yet proposed rules concerning crowdfunding portals,² FINRA has invited prospective funding portals to submit information, at no cost and on a confidential basis,

¹ The JOBS Act requires the SEC to adopt rules exempting funding portals from the requirement to register as a broker-dealer under Section 15(a) of the Securities Exchange Act of 1934, provided that such funding portal (i) is a member of a registered national securities association, (ii) remains subject to SEC examination, enforcement and rulemaking authority, and (iii) meets such other requirements that the SEC deems appropriate.

Practically speaking, in light of a statutory prohibition on soliciting offers or transactions, it appears likely that funding portals relying upon this exemption will be required to be affiliated with a broker-dealer.

² In July 2012, FINRA **solicited public comment** on the appropriate scope of FINRA rules that should apply to FINRA member firms engaging in crowdfunding activities, either as FINRA member funding portals or FINRA member broker-dealers.

through FINRA's [Interim Form for Funding Portals](#) (the "Interim Form").³ Completion of the Interim Form is voluntary, and will not result in FINRA membership or the ability to legally intermediate crowdfunding transactions. FINRA has not specified whether there is a time frame for submission of the Interim Form or any FINRA action on it.

The Interim Form solicits specific information from prospective funding portals, including:

- the funding portal's address, legal status and place of formation;
- information about the funding portal's owners, funding, and key business and contractual relationships;
- information about the funding portal's management personnel, including details regarding certain disciplinary actions;
- information about the compensation that the funding portal and its associated persons expect to receive;
- a description of how the funding portal intends to address the JOBS Act's requirements for funding portals, particularly the investor protections measures; and
- any other information that the prospective funding portal believes would be helpful to FINRA.

Voluntary filers of the Interim Form will still need to complete a new membership application form once the SEC and FINRA rules become effective, which, depending on the nature of the final rules, may require additional information. The potential benefits that a prospective funding portal may reap from completing the voluntary Interim Form generally appear to be minimal, although the Interim Form presents prospective funding portals with an opportunity to educate FINRA about the funding portal community and shape FINRA's views.

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³ Further information regarding FINRA's invitation to prospective funding portals is available in FINRA's [notice of proposed rule change](#) filed with the SEC, which became effective immediately.