

Corporate Department

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So You Want to be a Funding Portal? – Here’s what you need to know about the SEC’s Regulation Crowdfunding.

Raising money via crowdfunding in the United States was previously limited to donations or charity without giving the contributors an equity stake in a company because doing so would be an unauthorized offer or sale of a security under the securities laws. On October 30, 2015, the U.S. Securities Exchange Commission (the “SEC”) adopted Regulation Crowdfunding (“Reg CF”), which regulates the ability of companies to sell securities to the public through crowdfunding. When these rules become effective mid-May 2016, startups and other small companies seeking to solicit small investments from the general public will be able to do so using a low-cost alternative to a traditional registered public offering or private placement, subject to several requirements and restrictions.

This advisory provides an overview of the new Reg CF, focusing primarily on the requirements and obligations to act as an intermediary in these transactions. An overview of the requirements and obligations of an issuer under Reg CF and the Financial Industry Regulatory Authority, Inc.’s (“FINRA”) proposed rules for intermediaries, called “funding portals,” are attached to this advisory as **Exhibit A** and **Exhibit B**.

I. BACKGROUND

The impetus for Reg CF and its statutory authority is the Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012. Title III of the JOBS Act added Section 4(a)(6) to the Securities Act of 1933 (“Securities Act”), allowing companies to use the Internet to solicit equity or debt investments in unregistered securities from the general public. Traditionally, these types of solicitations were subject to the registration requirements of the Securities Act and the reporting requirements of the Securities Exchange Act of 1934 (“Exchange Act”). Section 4(a)(6) exempts certain offerings from the historical registration requirements and limitations on soliciting only those investors qualified for previously exempted offerings, while incorporating substantial investor protections to minimize fraud in the offerings. The JOBS Act also creates an exemption from state registration for offerings or sales of securities under Section 4(a)(6).

In addition to adding a new process for compliance by issuers with the securities registration requirements of the Securities Act, Title III to the Exchange Act requires the SEC to adopt rules exempting funding portals from broker-dealer registration. The JOBS Act also exempts funding portals from state broker-dealer registration in connection with Section 4(a)(6) offerings. Reg CF is the final step in creating a regulatory framework governing the registration and use of these new online platforms to ensure the effective facilitation of transactions between crowdfunding issuers and the general public.

II. GENERAL LIMITATIONS OF TITLE III

To qualify for the crowdfunding exemption, the offering must meet the following requirements:

- The amount raised must not exceed \$1 million in a 12-month period;
- Individual investments in all crowdfunding issuers in a 12-month period are limited to:
 - The *greater* of \$2,000 or five percent of the investor's annual income or net worth, if annual income or net worth of the investor is less than \$100,000; and
 - 10 percent of the *lesser* of the investor's annual income or net worth (not to exceed an amount sold of \$100,000), if annual income or net worth of the investor is \$100,000 or more; and
- Transactions must be conducted through an intermediary that is registered either as a broker-dealer or as a funding portal.

In calculating whether or not the \$1 million cap on the aggregate amount an issuer may raise under Section 4(a)(6) has been met or exceeded during a 12-month period, the issuer should count only sales under Section 4(a)(6) and should not include other exempt offerings under separate exemptions, such as Regulation D. However, issuers must consider, for purposes of aggregation, securities sold under Section 4(a)(6) by entities controlled by or under common control with the issuer and any predecessor of the issuer. The investor's annual income and net worth will be calculated in accordance with the methods for calculating these values for accredited investor status. All Section 4(a)(6) offerings must be conducted through intermediary online platforms¹ and issuers may use only one intermediary to conduct a particular offering and any concurrent offerings under Section 4(a)(6).

III. INTERMEDIARY REQUIREMENTS

A. Types of Intermediaries

Intermediaries play an integral and essential role in every offering under Section 4(a)(6), which requires that all crowdfunding transactions occur through an intermediary registered with the SEC as either a broker-dealer or a funding portal. Exchange Act Section 3(a)(80) defines "funding portal" as any broker acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Section 4(a)(6), provided the intermediary does not:

- Offer investment advice or recommendations;
- Solicit purchases, sales or offers to buy the securities offered or displayed on its website or portal;
- Compensate employees, agents or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal; or

¹ "Platform" is defined as a program or application accessible via the Internet or other similar electronic communication medium through which a registered broker or a registered funding portal acts as an intermediary in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act.

- Hold, manage, possess or otherwise handle investor funds or securities.

B. Funding Portals

Rule 401 of Reg CF expressly exempts entities operating solely as funding portals from the requirement to register as a broker-dealer. However, Rule 403 subjects business activities of funding portals to examination and inspection oversight by the SEC and FINRA. Similar to the expressly stated activities that funding portals may not perform, there are expressly permissible activities funding portals may perform, including:

- *Curation* – Funding portals may determine whether and under what terms to allow an issuer to sell securities through offerings on the portal's platform, subject to restrictions on providing investment advice or recommendations.
- *Highlighting Issuers and Offerings* – Funding portals may highlight certain offerings based on objective criteria (e.g. type of securities offered, geographic location of the issuer, industry of the issuer, or the number or amount of investor commitments made) that identify a broad selection of issuers. The criteria must be displayed on the platform.
- *Advertising* – Funding portals may advertise the existence of the portal and identify issuers or offerings on the portal based on objective criteria similar to the criteria for highlighting issuers and offerings above. Portals may not receive special or additional compensation for identifying particular issuers or offerings.
- *Limited Advising of Issuers* – Funding portals may assist issuers in determining the appropriate structure and content of the issuer's offering.

C. Intermediary Registration and Membership

As previously stated, Reg CF specifically requires funding portals to be registered with the SEC and to become members of FINRA. FINRA released proposed rules for funding portals on October 12, 2015. An overview of these rules is provided in [Exhibit B](#). In addition to FINRA membership, newly formed funding portals must also register with the SEC by filing Form Funding Portal ("Form FP") through EDGAR, which will require information similar to Form BD required of brokers-dealers, though less extensive due to the limited nature of a funding portal's activities. Funding portals completing Form FP will be required to submit information on the portal's principal place of business, legal status, disciplinary history, membership with FINRA and website URL. A funding portal's registration will become effective the later of: (1) 30 calendar days after the date that the SEC receives the Form FP; or (2) the date the funding portal is approved for membership in FINRA. Reg CF does not specify if Form FP should precede a FINRA application. It appears that an intermediary may become a FINRA member or submit the Form first, but registration with the SEC will not be effective until the intermediary is a FINRA member and has submitted Form FP.

D. Intermediaries and Compensation

Any intermediary, including a funding portal, can be paid transaction-based compensation, or commissions, for capital it raises. Funding portals can also charge up-front listing fees to issuers. However, there are limitations on the financial interests intermediaries or their executives may have in issuers using their services. An intermediary's directors, officers, or owners are prohibited from

having any financial interest in any issuer using its services or receiving compensation for services provided to the issuer related to the offering. The intermediary itself, however, may have a financial interest in an issuer using its services, provided that the intermediary receives the financial interest as compensation for services the intermediary provides to the issuer related to the offering and the intermediary receives securities of the same class, terms, conditions, and rights as the securities sold through the intermediary.

Registered broker-dealers are the only persons to whom a funding portal may pay compensation related directly or indirectly to the purchase or sale of a security in a Section 4(a)(6) offering. Broker-dealers operating as intermediaries may pay funding portals for referring potential investors and other services in connection with the purchase of securities in a Section 4(a)(6) offering. These compensation payments can be made only if: (1) such services are provided pursuant to a written agreement between the funding portal and the registered broker-dealer; (2) such services and compensation are permitted by Reg CF; and (3) such services and compensation comply with FINRA rules. These compensation payments are also limited by Reg CF Rule 305(a), which prohibits intermediaries from compensating individuals for providing personally identifiable information² of potential investors. Rule 305(a), however, does not prohibit intermediaries from paying promoters for certain advertising services, allowing payment of a flat fixed fee to promoters for directing potential investors to the intermediary's platform or payment of a third party to advertise the platform's existence.

E. Intermediaries' Diligence of Issuers

Intermediaries, as one of the primary protectors against investor fraud in Section 4(a)(6) offerings, must have a "reasonable basis" for believing issuers are in compliance with all relevant statutory and regulatory provisions governing the offerings. However, the SEC specifically rejected a traditional due diligence standard. In developing the reasonable basis for compliance, intermediaries may rely on representations from issuers, unless the intermediary questions the reliability of the issuer's representations. While the SEC does not prescribe the specific procedures required of an intermediary to be reasonably able to rely on an issuer's representations, intermediaries should develop adequate procedures due to potential liability under Section 4A(c) of the Securities Act for material misstatements or omissions in communications related to the offering. Intermediaries may defend themselves from this potential liability if the intermediary did not know of or if, after exercising reasonable care, the intermediary could not have known of the misstatement or omission. Broker-dealers should already have similar procedures in place for how to perform due diligence on issuers in private placement offerings, which can be expanded to include 4(a)(6) offerings.

F. Intermediaries and Investors

Investors interested in investing through an intermediary must open an account with the intermediary and consent to the delivery of educational materials and other communications via

² "Personally identifiable information" is defined as any information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

electronic means. Although Reg CF does not require a specific format or language in the educational materials, other than being written in plain language, the SEC does specify the content of the materials intermediaries must provide at account opening, which, among other things, must include:

- The process for the offer, purchase and issuance of securities and types of securities sold through the intermediary;
- The risks and restrictions on the amount and resale of securities sold under Section 4(a)(6);
- The types of information that an issuer is required to provide to investors;
- The issuer's and investor's investment commitment-cancellation rights; and
- The terms of the ongoing relationship between the issuer and intermediary beyond the offering.

Intermediaries must ensure the requisite educational materials are available to investors on the platform and must provide current educational materials to investors before accepting any additional investment commitments or conducting any additional Section 4(a)(6) offerings. In addition to providing this information to investors, intermediaries must confirm that an investor (1) has reviewed these educational materials, (2) understands that he or she may lose the entire investment and is in a financial condition to bear the loss, and (3) has completed a questionnaire showing that he or she understands the financial risks of the investment and other statutory aspects of Title III.

Intermediaries are also required to disclose information related to compensation. Specifically, intermediaries must inform investors that promoters receiving compensation from an issuer to promote their offering must disclose to the investor that they are receiving compensation. The intermediary must also disclose to investors how the intermediary itself is compensated in connection with the Section 4(a)(6) offerings through its platform.

Intermediaries must provide potential investors and the SEC any information required to be provided by the issuer under Reg CF Rules 201 and 203(a). This information must be: (1) publicly available in a manner in which a person accessing the platform can save, download, or store the information; (2) made publicly available on the platform for 21 days prior to the sale of any securities in the offering; and (3) remain publicly available until the sale of securities is completed or cancelled. Intermediaries cannot require a potential investor to first establish an account with the intermediary in order to be able to view this information.

An intermediary is required to ensure that investors participating in offerings through its platform have not exceeded the statutory limits for aggregate purchases in Section 4(a)(6) offerings. Similar to the standard for ensuring issuer compliance with relevant statutes and regulations, the intermediary must have a "reasonable basis" for believing each investor complies with all requirements and can rely on an investor's representations regarding financial status and investment history. Intermediaries can exercise discretion in developing their methods for verifying investor compliance. The SEC provides potential options for investor compliance verification, such as a central depository for crowdfunding investments, required submission of investor financial

information, or use of a questionnaire, but does not hold intermediaries to a specific verification process.

G. Communication Channels with Investors

Intermediaries and their platforms will serve as one of the primary communication channels between issuers and potential investors. In an effort to promote transparency and accountability, all communications regarding the terms of the issuer's offering must occur through the platform on which the offering is listed. Reg CF requires intermediaries to publicly display the conversations that occur through the communication channels, but limits comments from the general public to those individuals who have established an account with the intermediary. Intermediaries that are structured solely as funding portals will not be allowed to post any information on the communication channels they create to connect issuers and investors. While it appears that broker-dealers will be able to post on these channels, they are required to identify themselves with each post on the channel. Intermediaries of both types must also ensure that any founder, employee, or promoter of the issuer's offering properly discloses their identity in any post. Intermediaries are also required to remove any potentially fraudulent or abusive comments made on the platform's communication channels.

H. Offerings to Investors

Custody

Once an investor submits an investment commitment to the intermediary, the intermediary must send a notification, through e-mail or other electronic media subject to Rule 302(a)(2) of Reg CF³, including: (1) the dollar amount of the commitment; (2) the price of the securities, if known; (3) the name of the issuer; and (4) the date and time by which the investor may cancel the commitment. The rules relating to receipt of investor funds differ for intermediaries depending on whether they are broker-dealers or funding portals. Broker-dealers serving as intermediaries must comply with Exchange Act Rule 15c2-4, which requires broker-dealers to place funds received in connection with a contingent security offering in a separate bank account or transmit the funds to a bank to hold in escrow, and to transfer the funds to the appropriate recipient (generally the issuer) once the contingency has been satisfied. Funding portals operating as intermediaries are unable to hold investor funds or securities, and therefore must transfer funds from investment commitments to a "qualified third party."⁴ In both instances, regardless of intermediary type, the investment funds are transferred to the issuer if the target offering amount is met or exceeded, or must be returned to investors if the target is not met.

³ Rule 302(a)(2) requires an intermediary to "provide the information through an electronic message that contains the information, through an electronic message that includes a specific link to the information as posted on intermediary's platform, or through an electronic message that provides notice of what the information is and that it is located on the intermediary's platform or on the issuer's website." Electronic messages include, but are not limited to, e-mail, social media messages, instant messages or other electronic media messages.

⁴ A "qualified third party" is defined as a registered broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons, a bank, or a credit union insured by the National Credit Union Administration.

Canceling Commitments

Intermediaries will be held to strict standards for allowing investors to cancel investment commitments. Reg CF provides investors with an unconditional right to cancel any investment commitment until 48 hours prior to the issuer's deadline for closing the offering. Within the final 48 hours of the offering's deadline, investors are allowed to cancel commitments only if there is a material change in the offering. Issuers may accelerate deadlines to offerings that reach or exceed the target prior to the initial deadline. However, to do this, issuers must ensure:

- The offering has been open for at least 21 days;
- The intermediary provides notice of the new deadline at least five business days prior to the new deadline;
- Investors may cancel their commitments up to 48 hours prior to the new deadline; and
- At the new deadline, the issuer's offering continues to meet or exceed the target.

If a material change occurs, intermediaries are required to alert investors who have made commitments of the change and inform them that their commitments will be canceled if they do not reconfirm their commitments. Intermediaries must then cancel commitments and notify, through e-mail or other electronic media, all investors who do not reconfirm their commitments and arrange for return of the investors' funds. Additionally, an offering may be terminated because the target was not met or the issuer chose to do so. In these instances, intermediaries must also notify the investors of the cancellation and return their funds, and prevent any further commitments on that offering.

Other Notifications

At or before the completion of a transaction related to a Section 4(a)(6) offering, the intermediary must send a notification to investors including:

- The date of the transaction;
- The type of security the investor is purchasing;
- The identity, price and number of securities purchased by the investor, total number of securities sold by the issuer in the offering, and the sale price of the securities;
- Specified terms of the security; and
- The source and amount of any remuneration the intermediary receives or will receive in connection with the offering.

All intermediaries that are broker-dealers that send this required notification will be exempt from the confirmation requirements under Exchange Act Rule 10b-10.

I. Nonresident Funding Portals

Reg CF proposes special registration requirements for nonresident funding portals.⁵ First, there must be an information-sharing agreement in place between the SEC and the competent regulator in the jurisdiction under the laws of which the nonresident portal is organized or where the portal has its principal place of business. The nonresident funding portal must also:

- Obtain a written consent and power of attorney appointing an agent for service of process in the United States;
- Furnish the SEC with the name and address of its agent for service of process on Schedule C of Form FP; and
- Certify on Schedule C of Form FP and provide an opinion of counsel that it will provide the SEC and FINRA with prompt access to its books and records and submit to onsite inspection and examination by the SEC and FINRA.

Nonresident portals must appoint successor agents if their identified agent for service of process is discharged or unwilling or unable to accept service on its behalf. If any of the agent's information changes, the nonresident funding portal is required to promptly amend the information on its Schedule C. If any legal or regulatory changes may inhibit the nonresident funding portal's ability to meet its obligations to the SEC or FINRA, the portal must re-certify on Schedule C that it is still able to provide the SEC and FINRA with access to its books and records and remains subject to examination and inspection.

Any questions relating to this advisory may be directed to **Ethan L. Silver** (212-238-8687, silver@clm.com). **Anup Khatri** and **Justin L. Peters** contributed mightily to the preparation of this client advisory.

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⁵ "Nonresident funding portal" is defined as a funding portal incorporated in or organized under the laws of any jurisdiction outside of the United States or its territories, or having its principal place of business in any place not in the United States or its territories.

EXHIBIT A - ISSUER REQUIREMENTS

In order to engage in crowdfunding transactions, issuers must meet the eligibility criteria under Section 4(a)(6) of the Securities Act. Given that the purpose of Section 4(a)(6) of the Securities Act is to “facilitate capital formation by early stage companies that might not otherwise have access to capital,” the SEC excluded certain categories of issuers from relying on the crowdfunding exemption. Some issuers that are excluded are those that:

- are foreign companies⁶;
- are subject to Exchange Act reporting requirements;
- are investment companies under the Investment Company Act of 1940 (the “Investment Company Act”) or companies that are not considered investment companies under Section 3(b) or 3(c) of the Investment Company Act;
- are disqualified as a “bad actor”⁷;
- have relied on Section 4(a)(6) of the Securities Act and not met certain annual reports filing requirements
- have no specific business plan or have indicated that their business plan is to engage in a merger or acquisition; and
- are excluded as deemed appropriate by the SEC.

What follows are the various requirements and obligation Reg CF imposes on issuers that are eligible to engage in crowdfunding transactions.

A. Form C

All filings with the SEC under Reg CF must be made on Form C: Offering Statement (“Form C”). Form C allows issuers to check the appropriate box to designate the purpose of a particular Form C filing. This includes: (1) disclosures about the offering, (2) amendments and (3) progress updates. Issuers are required to provide filed Forms C to the relevant intermediary and make them available to investors.

B. Disclosures

Under Rules 201 and 203 of Reg CF, issuers must make certain disclosures to investors, including potential investors, and the relevant intermediary. These disclosures, which are to be filed with the SEC through Form C, cover a wide range of information, and include:

- ***Issuer Information***
 - General business information;
 - Names and experience of directors and officers;

⁶ The SEC believes that foreign issuers, including investment companies, not organized under the laws of the U.S., present certain risks that “would make them unsuitable for the scaled regulatory regime associated with securities-based crowdfunding transactions.”

⁷ See the bad actor disqualification provisions for Rule 506(d) and (e) of Regulation D under the Securities Act of 1933.

- Names of each person who is a beneficial owner of 20% or more of the issuer's outstanding voting equity securities;
- Financial condition and financial statements;
- Ownership and capital structure;
- Number of employees; and
- Indebtedness.
- **Offering Information**
 - Purpose and intended use of the proceeds of the offering;
 - Target offering amount, the deadline to reach that amount and regular updates on the progress of the issuer in meeting that amount (progress updates may be made publicly available on the intermediary's platform to meet this requirement);
 - Whether issuer would accept investments in excess of target amount, and if so, the maximum amount it would accept;
 - Total amount of securities sold;
 - If an offering is oversubscribed, how shares would be allocated;
 - Process to cancel an investment commitment or to complete transaction once target amount is met; and
 - Offering price or method of determining the offering price of the securities;
 - Location of the issuer's annual report and date of its availability on the issuer's website.
- **Intermediary Information**
 - Identity of the intermediary, including its name, SEC file number and CRD number (if applicable);
 - Compensation paid to the intermediary, or if the exact amount is unavailable at time of filing, a good faith estimate of the compensation to be paid; and
 - Direct or indirect interest in the issuer held by the intermediary, or any arrangement to acquire and interest.
- **Risk-Related Information**
 - Legends about the risk of investing in a crowdfunding transaction; and
 - Risk factors of investing in the issuer's offering, which are tailored to the issuer's business.
- **Prior Transactions**
 - Exempt offering conducted by the issuer within the past three years;
 - Failure to previously comply with any ongoing reporting requirements of Reg CF; and
 - Related-party transactions between the issuer and any director or officer of the issuer, any person who is a beneficial owner of 20 % or more of the issuer's outstanding voting securities, any promoter of the issuer (if the issuer was incorporated or organized within the past three years), or immediate family members of the foregoing persons.⁸
- **Miscellaneous**
 - Any material information to make statements not misleading; and

⁸ These disclosures are limited to related-party transactions in excess of 5% of the amount raised by the issuer under the crowdfunding exemption in the previous 12 months, including the amount of the current 4(a)(6) offering.

- Any additional disclosures required by the SEC for investor protection and in the public interest.

C. Amendments to Form C

Under Rule 203 of Reg CF, an issuer must amend Form C upon a material change in (1) the terms of the offering or (2) previous disclosures to the investors. A “material change” means a change in information, which under the facts and circumstances, “a reasonable investor would consider . . . important in deciding whether or not to purchase the securities.”

Examples of material changes that require an issuer to amend Form C include material changes in (1) the issuer’s financial condition, (2) the use of proceeds from the offering and (3) the determination of the final price of the securities offered. This rule is consistent with SEC’s historical approach of offering minimal guidance on materiality determinations and adopting a “facts-and-circumstances” standard.

Amendments to Form C must be filed with the SEC and provided to the intermediary and the investors. While issuers must provide the intermediary with a copy, they may provide information to investors electronically by referring investors to the information on the intermediary’s platform through e-mail or a posting on the issuers’ websites.⁹ Upon receipt, investors have five business days to reconfirm their commitment to invest through the offering.

D. Ongoing Reporting Requirements

Annual Reports. Under Rule 202 of Reg CF, issuers that have sold securities under the crowdfunding exemption must file annual reports with the SEC within 120 days following the end of the relevant fiscal year. Annual reports must include any information required in Form C that is not offering-specific. While an issuer is also required to post annual reports on its website, it is not required to notify or physically deliver annual reports to investors.

Financial Statements. Under Rule 202 of Reg CF, issuers must provide financial statements on an ongoing basis. Generally, issuers are permitted to provide financial statements certified by the principal executive officer, unless they have already prepared financial statements that are audited or reviewed by an independent certified public accountant, in which case those statements must be provided. Unaudited financial statements must be labeled as unaudited.

The financial statements must include balance sheets, statements of comprehensive income, statements of cash flows, statements of changes in stockholders’ equity and notes related to the financial statements. Specific requirements for financial statements also vary depending on the target offering price and for issuers engaging in their first 4(a)(6) offering:

⁹ The SEC anticipates that issuers seeking to engage in a 4(a)(6) offering will likely work closely to prepare the Forms C that would be filed with the SEC and provided on the intermediary’s platform.

- **Offerings of \$100,000 or less:**
 - Principal executive officer of the issuer must certify that the financial statements are true and complete in all material respects.
 - Issuer must disclose total income, taxable income and total tax, and have a principal executive officer certify that those amounts match the issuer's federal income tax returns.
- **Offerings of more than \$100,000 but not more than \$500,000:**
 - Issuers must file and provide reviewed financial statements.
- **Offerings of more than \$500,000:**
 - Issuers must provide audited financial statements.
 - Issuers engaging in their first 4(a)(6) offering are permitted to provide reviewed financial statements, unless audited financial statements are available.

Termination. Upon the occurrence of certain events under Rule 203 of Reg CF, issuers may terminate their obligation to file annual reports. The following events will terminate this obligation if the issuer:

- Is required to file reports under Exchange Acts Section 13(a) or 15(d);
- Has filed at least one annual report and has fewer than 300 equity holders of record;
- Has filed at least three annual reports and has total assets of \$10 million or less;
- Purchases or repurchases (or another party purchases or repurchases) all of the 4(a)(6) securities; or
- Liquidates or dissolves.

E. Prohibition on Advertising the Terms of the Offering

Under Rule 204 of Reg CF, issuers may advertise the terms of the offering subject to certain limitations. For an advertising notice to comply with this Rule, it must include no more than: “(1) a statement that the issuer is conducting an offering, the name of the intermediary through which the offering is being conducted and a link directing the investor to the intermediary’s platform; (2) the terms of the offering; and (3) factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number and website of the issuer, the e-mail address of a representative of the issuer and a brief description of the business of the issuer.” While similar to “tombstone ads” under the Securities Act, advertising notices under Rule 204 must direct investors, for example, through a link, to the relevant intermediary’s offering platform.

Issuers are not restricted in the manner in which they distribute advertising notices. As a result, an issuer may post notices in newspapers or on its own website. Also, issuers may take advantage of social media to attract investors. These notices do not have to be filed with the SEC or the relevant intermediary, and information that occurs in issuers’ ordinary course of operations, which does not refer to the terms of the offering, may be communicated without limitations.

F. Compensation of Promoters

Rule 205 of Reg CF requires that issuers take reasonable steps to ensure that any promoters of their offerings disclose past and prospective receipt of compensation before making a promotional communication. Otherwise, direct or indirect compensation of any promoters, through the relevant intermediary's channels of communication, are prohibited. Any promoters who are employees of the issuer or acting on behalf of the issuer, and who are making promotional communications through the intermediary channels of communication, must also disclose that they are promoting on behalf of the issuer, irrespective of whether their compensation is received in exchange for promotional activities.

Compensation for promotional communications outside of the intermediary's channels is prohibited unless they meet the requirements for an advertising notice.

G. Other Issuer Requirements

Oversubscriptions. Rule 205 of Reg CF permits issuers to accept investments in an amount greater than the target offering amount, subject to a \$1 million annual limitation and relevant disclosures at the commencement of the offering.

Offering Price. In addition to the disclosures related to offering price, the issuer must provide the investor, prior to the sale of any securities, the final offering price and all required disclosures in writing.

Types of Securities Offered and Valuation. Issuers are not limited in the securities they may offer or in the method used to value those securities.

EXHIBIT B - FINRA'S FUNDING PORTAL RULES

On October 28, 2015, as published in the Federal Register, FINRA proposed the adoption of Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the "Funding Portal Rules") and related forms, as well as new FINRA Rule 4518. The proposed Funding Portal Rules were written specifically for "funding portals," which will be treated as a separate category of FINRA members, distinct from broker-dealers. Along with FINRA Rule 4518, the Funding Portal Rules will further FINRA's goal to implement the crowdfunding provisions of Title III of the JOBS Act, and substantially lighten the regulatory burdens on funding portals while maintaining a focus on investor protection.

This is intended to address certain key aspects of FINRA's proposed Funding Portal Rules, including: (1) an overview of the proposed Funding Portal Rules and their impact on non-FINRA members; (2) changes in the proposed rules since 2013; and (3) the impact of proposed Rule 4518 on existing FINRA member broker-dealers.

A. Overview of the Rules and Consideration for Non-FINRA Members

Under the newly proposed Funding Portal Rules, prospective funding portal intermediaries will be required to become FINRA members and comply with the procedures set forth under those rules. Many of these rules subject funding portals to the requirements consistent with those for existing FINRA member broker-dealers, yet reduce the overall regulatory burden on funding portal members. The following are some of the notable aspects of the Funding Portal Rules, which demonstrate the lighter reach of the regulation that prospective funding portal members must consider.

Membership Application Process. While the application process under the proposed rules is based on the NASD 1010 Series membership rules that apply to broker-dealers, the proposed rules acknowledge the limited nature of funding portals and simplify those application requirements. For example, the application process for funding portals is limited to 60 days rather than 180 days for a full broker-dealer, and funding portal applicants must meet five standards rather than the 14 standards that apply to broker-dealer applications. A sample of the FINRA application for funding portals is available [here](#).

Communications with the Public. The proposed rules prohibit funding portals from making false and misleading statements through a streamlined version of FINRA Rule 2210.

Supervisory System. The proposed rules give funding portals the flexibility to conform their supervisory systems to their particular business models, which is a streamlined application of FINRA's supervisory rules. Funding portals will be required to establish written supervisory procedures; however, unlike broker-dealers, they will not be required to implement anti-money laundering procedures, as discussed below.

Reporting Requirements. The proposed rules require funding portal members to report to FINRA the occurrence of certain events, including regulatory and disciplinary proceedings.

This approach is consistent with FINRA Rule 4530 that relates to BrokerCheck Reports and Disclosures.

Statement of Gross Revenue. The proposed rules require funding portals to annually report to FINRA their gross revenue within 60 days following each calendar year-end.

Records of Associated Persons. The proposed rules subject funding portal members to maintain records of every associated person for five years, similar to the requirements for broker-dealers under the Securities and Exchange Act Rule 17a-3(a)(12)(ii).

Investigations and Sanctions. The proposed rules subject funding portal members to certain FINRA rules governing investigations and sanctions, with a few exceptions.

Public Disclosure of Information. The proposed rules allow FINRA to make certain information available to the public, which is a streamlined application of FINRA Rule 8312.

Arbitration and Mediation. Under proposed Funding Portal Rule 1200(a), funding portal members would be subject to FINRA Rules 12000 Series, 13000 Series and 14000 Series.

B. How Have These Funding Portal Rules Changed Since Their Initial Proposal in 2013?

Compared to FINRA's initial proposal in 2013, these Funding Portal Rules primarily reduce the regulatory burdens on prospective funding portals members in the following ways:

Fidelity Bond. FINRA removed the requirement that funding portals maintain fidelity bond coverage, reasoning that it would not be in the best interests of prospective funding portal members due to "the limited nature of funding portal business" and because the "regulatory experience with funding portals is still developing."

Anti-Money Laundering ("AML"). FINRA removed the requirement that funding portal members implement a written AML program. FINRA determined that AML rules would be unnecessary since funding portals are prohibited from holding, managing, possessing or otherwise handling investor funds or securities, and therefore, not situated to assist with money laundering.

Central Registration Depository ("CRD"). FINRA declined to revise the 2013 proposed rules to require funding portals to submit mandatory filings through the CRD. Instead, FINRA indicated that, under the proposed Funding Portal Rules, funding portal members will have greater "regulatory flexibility" when utilizing FINRA's submission system.

Associated Persons of Funding Portals. FINRA declined the suggestion to narrow the proposed definition of associated person to exclude from the definition funding portal employees who exclusively provide service to issuers. At the same time, FINRA is not imposing examination and registration requirements on associated persons of funding portals.

C. Impact on Existing FINRA Members

Proposed FINRA Rule 4518 addresses broker-dealers that are already FINRA members. Under Rule 4518, those broker-dealers will be required to notify FINRA if they intend to act as intermediaries for issuers of securities pursuant to the crowdfunding exemption. Specifically, they must notify FINRA (1) “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,” and (2) “within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal...” FINRA anticipates that Rule 4518 will allow it to more accurately track which members are engaging in activities related to Title III of the JOBS Act, and as a result, ultimately facilitate with its regulatory responsibilities.