February 3, 2014

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

Via email to rule-comments@sec.gov

Dear Ms. Asquith:

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

Introduction

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

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

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

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

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

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

Anti-Money Laundering

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

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

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

Fidelity Bonds

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

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

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

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

Sincerely,

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