

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76238; File No. SR-FINRA-2015-041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Establish Fees for Funding Portals

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 2015, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt Section 15 of Schedule A to the FINRA By-Laws (“Section 15”) governing fees for funding portals that are FINRA members.

Below is the text of the proposed rule change. Proposed new language is in italics.

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BY-LAWS OF THE CORPORATION

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SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

Section 1 through Section 14 No Change.

Section 15—Funding Portal Member Fees

(a) FINRA shall, in accordance with this section, collect fees that are designed to recover the costs to FINRA of the supervision and regulation of funding portal members, including the membership process and performing

examinations, policy, rulemaking, interpretive and enforcement activities. FINRA shall periodically review funding portal fee revenues in conjunction with these costs to determine the applicable fees and rates. FINRA shall publish notices of the fees and adjustments to the assessment rates applicable under this section.

(b)(1) Each funding portal applicant for membership shall be assessed an application fee of \$2,700 at the time Form FP-NMA is filed.

(b)(2) Each funding portal applicant for approval of a change in ownership or control shall be assessed an application fee of \$500 at the time Form FP-CMA is filed.

(b)(3) If an application pursuant to paragraph (b)(1) or (b)(2) is rejected as incomplete or is withdrawn by the funding portal applicant in accordance with Funding Portal Rule 110(a)(5) or (a)(7), the application fee shall be refunded less \$250, which shall be retained by FINRA as a processing fee.

(c)(1) Each funding portal member shall pay an annual gross income assessment determined in accordance with Section 1(c) of this Schedule A. Gross revenue is defined for assessment purposes as gross revenue as reported on Form FP—Statement of Revenue.

(c)(2) The annual fee of a funding portal that is not a member throughout FINRA’s full calendar year from January 1 to December 31 shall be based upon the number of quarter years of membership. The proration for a new funding portal member shall include the quarter year in which the funding portal member is admitted to membership. The proration for a funding portal member that withdraws from membership shall include the quarter year in which the funding portal member’s withdrawal from membership is effective.

(c)(3) A funding portal member that is a successor organization to a previous funding portal member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Whether a funding portal member is the successor organization to a previous funding portal member or members shall be determined by FINRA upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A funding portal member that has simply acquired the personnel and offices of another funding portal member under circumstances that do not constitute the funding portal member a successor organization shall

not be required to assume the unpaid assessments of the other member.

(d) A nonresident funding portal member shall reimburse FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from the District Office of appropriate jurisdiction.

(e) FINRA shall assess each funding portal member a fee of \$100 on the first day and \$25 for each subsequent day, up to a maximum of \$1,575, that a new disclosure event or a change in the status of a previously reported matter is not timely filed pursuant to Funding Portal Rule 800(b)(2).

(f)(1) A funding portal member shall pay a fee of \$1,500 at the time that it files an application to initiate eligibility proceedings pursuant to Funding Portal Rule 900(b). Any funding portal member whose application results in a full hearing for eligibility in FINRA pursuant to Funding Portal Rule 900(b) shall pay to FINRA an additional fee of \$2,500.

(f)(2) A funding portal member that continues to associate with any individual subject to disqualification or otherwise ineligible from association with a member shall pay annually to FINRA a fee of \$1,500 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

(g) A funding portal member shall pay \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the member, or \$30 if submitted in non-electronic format, to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints.

(h) Request for Data and Publications. Where there is no provision elsewhere in the By-Laws for specific fees, the corporation may impose and collect compensatory charges for data from its records or for its publications.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Title III of the Jumpstart Our Business Startups (“JOBS”) Act,⁵ enacted in 2012 with the goal of increasing American job creation and economic growth, contains key provisions relating to securities offered or sold through “crowdfunding.”⁶ Under Section 302 of the JOBS Act, a crowdfunding intermediary that engages in crowdfunding on behalf of issuers relying on the JOBS Act’s “crowdfunding exemption”⁷ is required to register with the SEC as a “funding portal”⁸ or broker and to register with an applicable self-regulatory organization.⁹

In October 2013, the SEC proposed rules to require registration of funding portals and to implement the provisions of Title III of the JOBS Act.¹⁰ Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if adopted by the SEC and to apply for FINRA membership.

⁵ Pub. L. 112–106, 126 Stat. 306 (2012).

⁶ Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.

⁷ See new Section 4(a)(6) of the Securities Act of 1933 (the “Securities Act”) (15 U.S.C. 77d(a)(6)), as amended by the JOBS Act. The crowdfunding exemption creates an exemption from registration under the Securities Act for securities offered by issuers pursuant to Title III of the JOBS Act.

⁸ Section 3(a)(80) of the Act (15 U.S.C. 78c(a)(80)), as amended by Title III of the JOBS Act, provides that the term “funding portal” means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)), that does not: (1) Offer investment advice or recommendations; (2) solicit purchases, sales, or offers to buy the securities offered or displayed on its Web site or portal; (3) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its Web site or portal; (4) hold, manage, possess, or otherwise handle investor funds or securities; or (5) engage in such other activities as the Commission, by rule, determines appropriate.

⁹ See Sections 4A(a)(1) and (2) of the Securities Act (15 U.S.C. 77d–1(a)(1) and (2)).

¹⁰ See Securities Exchange Act Release No. 70741 (October 23, 2013), 78 FR 66428 (November 5, 2013) (Crowdfunding; Proposed Rules) (the “Regulation Crowdfunding Proposal”). The SEC’s proposed Rule 400(a) under Regulation Crowdfunding requires in part that a funding portal must register with the Commission and become a member of FINRA or any other applicable national securities association registered under SEA Section 15A (15 U.S.C. 78o–3). FINRA is the only registered national securities association.

Section 3(h)(2) of the Act,¹¹ as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals. FINRA has submitted a companion filing to adopt the Funding Portal Rules and related forms.¹² This proposed rule change would adopt the fees applicable to funding portal members. FINRA has written the proposed rule change specifically for funding portals.

Proposed Funding Portal Rule 100 provides in part 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.” Member regulatory fees are set forth in Schedule A to the By-Laws of the Corporation. FINRA proposes to amend Schedule A by adding Section 15, Funding Portal Member Fees.

Many of the fees charged to broker-dealer members pursuant to Schedule A to the By-Laws have no application to funding portal members due to the limited scope of funding portal activities.¹³ Proposed Section 15, Funding Portal Fees, would establish the fees described below for funding portals that are FINRA members.

Initial Membership Application

The proposed rule change would impose a membership application fee of \$2,700 charged at the time Form FP–NMA (new member application) is filed pursuant to proposed Funding Portal Rule 110(a)(3). These fees reflect the anticipated resource demands associated with processing and reviewing funding portal membership applications to determine whether the applicant meets the standards for membership set forth in proposed Funding Portal Rule 110.

Approval of Change in Ownership or Control

The proposed rule change would impose a continuing membership application fee of \$500 charged at the

¹¹ 15 U.S.C. 78c(h)(2).

¹² Specifically, FINRA has submitted a companion filing to adopt Funding Portal Rules 100, 110, 200, 300, 800, 900 and 1200 (collectively, the “Funding Portal Rules”), and related forms (Form FP–NMA, Form FP–CMA, Funding Portal Rule 300(c) Form, and Form FP–Statement of Revenue), regarding the regulation of funding portal member activities. See SR–FINRA–2015–040.

¹³ See, e.g., Schedule A, Section 1(b) (Trading Activity Fees), Section 3 (Regulatory Transaction Fees), Section 4(a) (Branch Office Fees), and Sections 4(b) and 4(c) (Registration and Testing Fees).

time Form FP–CMA (continuing membership application) is filed pursuant to proposed Funding Portal Rule 110(a)(4). Proposed Funding Portal Rule 110(a)(4) provides that a funding portal member must file an application for approval of specified changes in ownership or control. The membership program incurs costs in reviewing continuing membership application materials and assessing whether the application meets the required standards set forth in proposed Funding Portal Rule 110.

Refunds for Incomplete or Withdrawn Applications

If an application on proposed Form FP–NMA or Form FP–CMA is rejected as incomplete within 14 days in accordance with proposed Funding Portal Rule 110(a)(5) or withdrawn by the applicant within 14 days in accordance with proposed Funding Portal Rule 110(a)(7), the application fee would be refunded less \$250, which would be retained by FINRA as a processing fee.

Gross Income Assessment

FINRA’s gross income assessment is a key element of its primary pricing structure. The fee is used to fund FINRA’s regulatory activities, including its examination and enforcement programs. Section 1(c) of Schedule A of the By-Laws establishes a seven-tier rate structure under which each member pays a gross income assessment. Section 15 would impose this requirement on funding portal members. Under this rate structure, a funding portal with annual gross revenue of \$1 million or less would pay a \$1,200 annual fee. As proposed by FINRA, funding portals would be required to report their gross revenue on Form FP–Statement of Revenue.¹⁴

Nonresident Funding Portals

Section 15 would include a provision similar to NASD Rule 1090(b), and would require nonresident funding portals to reimburse FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant

¹⁴ Article VI, Section 2 of FINRA’s By-laws provides that “Each member, issuer, or other person shall promptly furnish all information or reports requested by the Corporation in connection with the determination of the amount of admission fees, dues, assessments, or other charges.” FINRA has proposed that funding portal members be required to submit Form FP–Statement of Revenue each year. See note 12 *supra*.

from the District Office of appropriate jurisdiction.

Late Filings

Pursuant to proposed Funding Portal Rule 800(b)(2), funding portals would be required to keep statutory disqualification information current and to update the information promptly, but in any event not later than 10 days following any change in such information. Section 15 would assess a funding portal member a fee of \$100 on the first day and \$25 for each subsequent day, up to a maximum of \$1,575, if statutory disqualification information is not provided or updated pursuant to proposed Funding Portal Rule 800(b)(2) within the prescribed 10 days.¹⁵ FINRA proposes to impose this late fee, which is based on existing Section 4(h) of Schedule A of the By-Laws, as an additional mechanism to help ensure that funding portal members make required disclosures under proposed Funding Portal Rule 800(b)(2) in a timely manner.¹⁶ FINRA also may bring disciplinary actions for failure to timely file or update the required disclosures under proposed Funding Portal Rule 800(b)(2), and would exercise discretion to bring such actions based on the facts and circumstances of individual cases notwithstanding the establishment of the late fee.

Relief From Statutory Disqualification or Other Ineligibility Provisions

Section 15 would impose a fee of \$1,500 upon filing of an application by a funding portal to continue to employ a person that is subject to a statutory disqualification or is otherwise ineligible under FINRA rules from association with the funding portal. Any funding portal whose application results in a full hearing for eligibility pursuant to Funding Portal Rule 900(b) also would have to pay FINRA an additional fee of \$2,500. In addition, Section 15 would provide that any portal that continues to employ as an associated person any individual subject to disqualification shall pay FINRA an

annual fee of \$1,500 when the individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000 when the individual is classified as a Tier 2 statutorily disqualified individual. The purpose of these fees is to assist FINRA in recovering the costs associated with processing applications submitted by firms seeking to associate with persons subject to a statutory or other disqualification.¹⁷ Moreover, the proposed rule change would impose an annual fee on funding portal members that are approved to associate with an individual that is subject to a statutory disqualification, in light of the additional costs FINRA incurs for related oversight and examinations. For purposes of oversight, persons subject to a statutory disqualification are classified into one of three tiers, and the level of continuing examination varies among the tiers.

Fingerprint Fees

Section 15 would provide that each funding portal member shall pay \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the funding portal member, or \$30 if submitted in non-electronic format, to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints. FINRA processes fingerprints submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to SEA Section 17(f)(2) (15 U.S.C. 78q(f)(2)) and SEA Rule 17f-2 (17 CFR 240.17f-2). Proposed Regulation Crowdfunding provides that associated persons of intermediaries engaging in transactions in reliance on Securities Act Section 4(a)(6) must comply with SEA Rule 17f-2, relating to the fingerprinting of securities industry personnel.¹⁸

Data and Publications

Section 15 would provide that if there is no provision in the By-Laws for specific fees, FINRA may collect compensatory charges for data from its records or for its publications. This

provision would be identical to Section 10 of Schedule A of the By-Laws, applicable to broker-dealer members.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be the implementation date of FINRA's proposed Funding Portal Rules, in whole or in part.¹⁹

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,²⁰ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed fees are reasonable based on the limited permissible activities of funding portal members, the nature and scope of FINRA's regulatory program that will apply to such members, and the related estimated costs of establishing and maintaining the program. The proposed fees also would contribute to the general funding of FINRA's overall regulatory program and serve to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities.

FINRA also believes that the proposed fees are equitably allocated among funding portal members and funding portal applicants for membership. All funding portal members would incur the same proposed fee for membership and continuing membership applications, with both fees being lower than the fees charged to broker-dealer members in light of the limited activities of funding portal members and the streamlined application forms. In contrast, the proposed gross income assessment would be calculated using the same rate structure used for broker-dealer members, with those funding portal members having a higher annual gross income paying a larger assessment for regulatory purposes. As further discussed below, the proposed rule change also would impose late filing fees, fees related to eligibility proceedings and examinations of statutorily disqualified persons, and fingerprinting processing fees that are identical to those charged to broker-dealer members.

¹⁵ Pursuant to proposed Funding Portal Rule 300(c) (Reporting Requirements), funding portal members also would be required to file a Funding Portal Rule 300(c) Form within 30 calendar days of specified disclosure events, including specified statutory disqualifications. The proposed rule change, however, would not impose a late filing fee on filings pursuant to Funding Portal Rule 300(c).

¹⁶ FINRA recognizes that funding portal members may be prevented from filing timely disclosures if their associated persons fail to advise them of some events resulting in a statutory disqualification to which the associated persons, and not the members, are privy. In such cases, FINRA will consider the facts and circumstances in determining whether it is appropriate to impose the late fee.

¹⁷ FINRA has proposed to adopt Funding Portal Rule 900(b), which 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. See note 12 *supra*.

¹⁸ See Regulation Crowdfunding Proposal at 78 FR 66507.

¹⁹ See note 12 *supra*.

²⁰ 15 U.S.C. 78o-3(b)(5).

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the fees as set forth in this proposed rule change are reasonable based on the limited permissible activities of funding portal members, the nature and scope of FINRA's regulatory program that will apply to such members, and the related estimated costs of establishing and maintaining the program. Because funding portals are entities newly-created by the JOBS Act, FINRA has yet to implement its proposed regulatory program for these entities. As such, the proposed rule change reflects FINRA's efforts to estimate the costs of funding portal oversight and to recover those incremental costs.²¹

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to further analyze the need for the proposed rulemaking, the regulatory objective of the rulemaking, the economic baseline of analysis, and the economic impacts.

1. Need for the Rules

Section 3(h)(2) of the Exchange Act,²² as amended by the JOBS Act, requires that FINRA only examine for and enforce against registered funding portals rules that FINRA has written specifically for registered funding portals.

Under Title III of the JOBS Act, a funding portal is a new type of intermediary the business activities of which are of limited scope, as defined by the JOBS Act, relative to entities that register as brokers. Among other things, the JOBS Act adds Section 4(a)(6) to the Securities Act,²³ which creates an exemption (the "crowdfunding exemption") from registration requirements under the Securities Act for securities offered and sold pursuant to the crowdfunding exemption. Broadly, the crowdfunding exemption permits an issuer to offer and sell up to \$1 million in securities over a 12-month period. The amount of any such security sold to an investor by an issuer is not permitted to exceed specified thresholds. Further, the issuer must

comply with other specified requirements under the JOBS Act and Commission rules. Any offering pursuant to the crowdfunding exemption must be conducted through a broker or a funding portal that is registered with the SEC.

Under the JOBS Act, a funding portal must become a member of a national securities association that is registered under Section 15A of the Exchange Act (15 U.S.C. 78o-3). FINRA is the only national securities association that is registered under Section 15A of the Exchange Act.

Prospective funding portal operators have stated that they intend to register with the SEC pursuant to Regulation Crowdfunding if it is adopted by the SEC and to apply for FINRA membership.

The proposed rule change would adopt the fees applicable to funding portal members. FINRA has separately filed a proposed rule change to establish a set of Funding Portal Rules and related forms for funding portals.²⁴

2. Regulatory Objective

The crowdfunding exemption is designed to help provide startups and small businesses with capital by making relatively low dollar offerings of securities less costly. The exemption creates a regulatory pathway for funding portals to facilitate the offer and sale of securities, as registered funding portals, without being required to register with the SEC as brokers, provided they comply with specified limitations on their business activity.

The proposed rule change aims to establish a fee regime for membership that adequately reflects the regulatory costs of review, aligns regulatory costs with those imposed on other FINRA members and minimizes the burden imposed on funding portal members by setting forth regulatory fees that reflect the limited scope of activities of funding portals while also maintaining investor protection.

3. Economic Baseline

Funding Portal Rule 100(a), as proposed in SR-FINRA-2015-040, provides in part that all 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. Member regulatory fees are set forth in Schedule A to the By-Laws of the Corporation. FINRA proposes to amend Schedule A by adding Section 15, Funding Portal Member Fees.

In the absence of the proposed rule change, funding portals would need to register as brokers and would thereby be subject to the fees charged to broker-dealer members. However, many of the fees charged to broker-dealer members pursuant to Schedule A to the By-Laws, such as Trading Activity Fees, Regulatory Transaction Fees and Branch Office Fees, have no application to funding portal members due to the limited scope of funding portal activities. For the fees that are applicable to funding portals, the fees currently charged to broker-dealer members are generally higher than the fees set forth in the proposed rule change.

Therefore, if funding portals were subject to the fees charged to broker-dealer members, there might be several unintended consequences. First, there may be confusion among funding portal members as some of the fees are not applicable to funding portals, which may increase compliance costs. Second, higher fees may potentially restrict the number of registered funding portals and thus reduce competition in the crowdfunding intermediary market. Third, higher fees may also limit the activities of those funding portals that do choose to become funding portal members, for instance because higher costs to membership may restrict capital available for business purposes.

In addition to prospective funding portals, the absence of the proposed rules may also have an impact on: Issuers, typically startups and small businesses seeking to raise capital by issuing securities; investors that purchase or may consider purchasing securities in such offerings; and other capital providers, broker-dealers and funders that currently participate in private offerings.

For the issuers seeking to raise capital through securities-based crowdfunding in reliance on the crowdfunding exemption, limited numbers of registered funding portals due to higher fees may result in higher capital raising costs, decreased opportunities for selling securities through a given registered funding portal, or an aggregate reduction in the capacity of registered funding portals. Higher fees to registered funding portals may also be passed on to issuers. All of these impacts would collectively make it more difficult for startups and small businesses to efficiently find capital for their operations.

Limited numbers of registered funding portals may also limit investor access to securities-based crowdfunding offerings. In addition, higher capital raising costs to issuers and higher fees

²¹ As FINRA gains experience in regulating funding portal member activities, FINRA will periodically review funding portal fee revenues in conjunction with these costs to determine applicable fees and rates.

²² 15 U.S.C. 78c(h)(2).

²³ 15 U.S.C. 77d(a)(6).

²⁴ See note 12 *supra*.

to registered funding portals could be passed on to potential investors.

The absence of the proposed rule change also might have an effect on broker-dealers and finders participating in private offerings. If issuers intending to raise capital in reliance on the crowdfunding exemption face higher costs due to the fees charged to funding portals, some may instead choose to raise capital through private offerings with the assistance of broker-dealers and finders. This could increase the revenue of finders and broker-dealers in the market for private offerings, but less competition in the fundraising market may lead to less efficient allocation of capital.

4. Economic Impacts

a. Benefits

The proposed rule change sets forth regulatory fees for prospective funding portal members. It facilitates the purposes of the proposed Funding Portal Rules by: Providing a mechanism by which funding portals can become funding portal members of FINRA and thereby comply with the JOBS Act; providing certainty with respect to the membership process; establishing a fee structure that is broadly consistent with FINRA's fees to its current members for similar activities; and, aligning the costs of membership with the expenditure of regulatory resources that would be necessary for review of funding portal membership applications.

b. Costs to Funding Portals

The proposed rule change sets forth the fees that would apply to funding portals. The costs associated with the provisions of the proposed rule change are discussed below. The proposed fees are generally lower than the fees that are charged to broker-dealer members under current rules. As such, the fees that would be charged to funding portal members would be generally higher in the absence of the proposed rule change.

c. Initial Membership Application

The SEC estimates that approximately 50 entities per year would choose to register as funding portals during the first three years following effectiveness of the SEC's proposed rules.²⁵ The SEC also estimates that two out of the 50 funding portals would be nonresident funding portals.²⁶ FINRA is proposing an initial membership application fee of \$2,700 per funding portal. Therefore, FINRA estimates the total membership

application fee across all funding portals to be \$135,000 per year (\$2,700/funding portal × 50 funding portals). The SEC estimates that the two nonresident intermediaries would face an additional cost of \$25,130 to complete Schedule C, retain an agent for the service and provide an opinion of counsel to register as a nonresident funding portal.²⁷

The SEC assumes that 90% of the funding portals would employ an outside party to assist in the membership process and that a third party would charge \$25,000 on average.²⁸ Thus the total costs charged by the outside parties to funding portals are estimated to be approximately \$1,125,000 (\$25,000/third party × 45 funding portals) per year.

While the proposed rule change does not require funding portal members to appoint a dedicated Chief Compliance Officer, FINRA expects that funding portals generally will have designated employees responsible for compliance activities. As such, FINRA estimates certain compliance costs based on the assumption of the appointment of a Chief Compliance Officer or person in a similar position. To the extent that the funding portal member designates an employee who is not a Chief Compliance Officer to fulfill this responsibility, the estimate below is conservative. The SEC assumes that a funding portal's Chief Compliance Officer or person in a similar position would spend 110 hours assisting in the membership process or 55 hours if an outside party is hired.²⁹ The hourly rate for a Chief Compliance Office is estimated to be \$441.³⁰ Therefore, the total annual costs associated with Chief Compliance Officers are estimated to be \$1,334,025 (\$441/hour × 110 hours × 5 funding portals + \$441/hour × 55 hours × 45 funding portals).

In sum, the total costs to complete initial funding portal membership processes with FINRA are estimated to be \$2,644,285 (\$135,000 + \$25,130 × 2 + \$1,125,000 + \$1,334,025) per year across all funding portals for the first three years following effectiveness of the SEC's proposed rules.

FINRA also proposes to conduct one or more membership interviews with a representative or representatives of a funding portal applicant prior to FINRA's decision on the application.

²⁷ See Regulation Crowdfunding Proposal at 78 FR 66542.

²⁸ See Regulation Crowdfunding Proposal at 78 FR 66542.

²⁹ See Regulation Crowdfunding Proposal at 78 FR 66542.

³⁰ See Regulation Crowdfunding Proposal at 78 FR 66543.

FINRA does not expect the costs associated with membership interviews to be material. In case of an application denial, the applicant may appeal FINRA's decision and may apply for review by the SEC if aggrieved by the final action of FINRA. The direct costs associated with an appeal of FINRA's decision or an application to SEC for review may include expenses to file the application and legal fees. Indirect costs may include the time involved to pursue the appeal and the lost revenues while the appeal is pending. These costs may vary significantly and are difficult to quantify.

d. Approval of Change in Ownership or Control

The proposed rule change would impose a continuing membership application fee of \$500 charged at the time Form FP-CMA is filed pursuant to proposed Funding Portal Rule 110(a)(4). Based on FINRA staff experience with member applications, approximately 3.8% of the member firms file a change in ownership or control each year. Assuming the same rate for funding portals, the SEC's assumption of 50 funding portals per year indicates that approximately 11 (50 × 3.8% + 100 × 3.8% + 150 × 3.8%) Form FP-CMAs would be filed in the first three years. This represents \$5,500 in fees to be paid.

e. Refunds for Incomplete or Withdrawn Applications

Under the proposed rule change, if a Form FP-NMA or Form FP-CMA application is rejected as incomplete within 14 days in accordance with proposed Funding Portal Rule 110(a)(5) or withdrawn by the applicant within 14 days in accordance with proposed Funding Portal Rule 110(a)(7), the application fee would be refunded less \$250. To estimate the number of applications that would qualify for a refund, FINRA looks to its experience with broker-dealer membership applications. Since March 2013, when the refund processing fee for full broker-dealer applications withdrawn in the first 30 days was put into place, 1,067 full Form CMAs have been filed through July 31, 2015, including 48 CMAs that were incomplete or withdrawn and were charged the refund processing fees, representing a 4.5% rate of refund processing fee charges. Assuming 150 total Form FP-NMAs and 11 total Form FP-CMAs in the first three years, using the same rate of 4.5% leads to the estimate that approximately seven Form FP-NMAs and one Form FP-CMA would be subject to the \$250 processing fee in lieu of the overall Forms FP-NMA

²⁵ See Regulation Crowdfunding Proposal at 78 FR 66539.

²⁶ See Regulation Crowdfunding Proposal at 78 FR 66540.

and FP-CMA fees (of \$2,700 or \$500 each, respectively).

f. Gross Income Assessment

Under the proposed rule change, a funding portal with annual gross revenue of \$1 million or less would pay a \$1,200 annual fee. Assuming that all funding portals will have an annual gross income of \$1 million or less, the total costs to remain a member of FINRA are estimated to be \$60,000 ($\$1,200/\text{portal} \times 50$ funding portals) in the first year following effectiveness of the SEC rules, \$120,000 ($\$1,200/\text{portal} \times 100$ funding portals) in the second year, and \$180,000 ($\$1,200/\text{portal} \times 150$ funding portals) per year going forward.

g. Nonresident Funding Portals

Nonresident funding portals would be required to reimburse FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from the District Office of appropriate jurisdiction. The SEC estimates that two out of the 50 funding portals per year would be nonresident. FINRA does not expect the reimbursement to be material. The SEC also estimates that the two nonresident funding portals would be subject to an additional annual cost of \$130 to maintain an agent for service of process in the United States.³¹

h. Late Filings

Proposed Section 15 would assess a funding portal member a fee of \$100 on the first day and \$25 for each subsequent day, up to a maximum of \$1,575, if statutory disqualification information is not provided or updated pursuant to proposed Funding Portal Rule 800(b)(2) within the prescribed 10 days. Given the limited scope of the proposed disclosure requirements for funding portal members, FINRA does not expect to receive a significant number of late filings.

i. Relief From Statutory Disqualification or Other Ineligibility Provisions

Section 15 would impose a fee of \$1,500 upon filing of an application by a funding portal to continue to employ a person that is subject to a statutory disqualification or is otherwise ineligible under FINRA rules from association with the funding portal. The rule provides that any funding portal whose application results in a full

hearing for eligibility also would have to pay FINRA an additional fee of \$2,500. In addition, Section 15 would provide that any funding portal that continues to employ as an associated person any individual subject to disqualification shall pay FINRA an annual fee of \$1,500 when the individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000 when the individual is classified as a Tier 2 statutorily disqualified individual.

Based upon historical data ascertained over the past five years, FINRA performed statutory qualification reviews on an average of 0.4209% of the total membership per year, and 0.0342% were deemed statutorily disqualified. Out of the statutory disqualifications, 22.5% (or 0.0077% of the total membership) elected to file an application to initiate the eligibility proceedings. Given the limited number of expected funding portals and the likely small size of the funding portals as compared to broker-dealers, FINRA expects the volume of eligibility proceeding applications to be immaterial.

In case a funding portal member elects to file an application, it needs to complete FINRA's Form MC-400 for an individual or Form MC-400A for the funding portal member. A Form MC-400 or MC-400A is estimated to take a Chief Compliance Officer or person in a similar position 20 hours to complete. Assuming an hourly rate of \$441 for a Chief Compliance Officer, the estimated cost for a funding portal to file an application would be \$8,820.

Based upon its experience with member firms, FINRA expects that a small percentage of applications will be appealed to the SEC for review. The direct cost in connection with an appeal to the SEC of a statutory disqualification denial will be legal fees to pursue the appeal if the party is represented, which can vary significantly. The indirect costs may include the time involved to pursue an appeal and the lost revenue or income while an appeal is pending if the member is not already a member of FINRA, which are difficult to quantify.

j. Fingerprint Fees

Section 15 would provide that each funding portal member shall pay \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically by the funding portal member, or \$30 if submitted in non-electronic format, to FINRA, plus any other charge that may be imposed by the United States Department of Justice for processing each set of fingerprints. Effective February 1, 2015, the United States Department of Justice

charges \$12.75 for each set of fingerprints.³² Assuming that on average five persons will be required to be fingerprinted per funding portal, FINRA estimates that 250 persons will be fingerprinted per year. If half of the fingerprints will be submitted electronically, the total payments for fingerprints are estimated to be \$8,812.5 ($(\$15 + \$12.75) \times 125 + (\$30 + \$12.75) \times 125$) per year.

k. Data and Publications

Section 15 would provide that if there is no provision in the By-Laws for specific fees, FINRA may collect compensatory charges for data from its records or for its publications. FINRA believes that the total charges would be immaterial.

l. Impact on Competition

As discussed earlier, under the JOBS Act, an intermediary that engages in crowdfunding on behalf of issuers must register with the SEC as a funding portal or broker and register with an applicable self-regulatory organization.³³ The proposed rule change would establish a fee schedule imposed equally on all prospective funding portal registrants. As such, it creates no competitive benefit or cost to any set of registrants seeking to become a funding portal member. Broker-dealer members that seek to engage in crowdfunding business may do so, but may be subject to the fees associated with an application for approval of change in business operations pursuant to NASD Rule 1017. FINRA believes that it has mitigated impacts on competition among broker-dealers by relying on the membership application process and fee schedule that is already in place for such members. This approach would treat the potential extension of a broker-dealer's business to crowdfunding services just as it would any potential change in the business activity of a broker-dealer and therefore creates no new obligations or impacts.

To the extent that the proposed fees for funding portals create incentives to conduct crowdfunding services through a funding portal rather than through an existing broker-dealer, FINRA notes that any broker-dealer can opt to offer such services through a funding portal affiliate. In doing so, the broker-dealer would face the same fees as any other funding portal registrant.

As discussed earlier, in the absence of the proposed rule change, funding

³² See Department of Justice, Federal Bureau of Investigation ("FBI"): FBI Criminal Justice Information Services Division Fee Schedule, 79 FR 63943 (October 27, 2014).

³³ See note 9 *supra*.

³¹ See Regulation Crowdfunding Proposal at 78 FR 66543.

portals would need to register as brokers and the fees charged to funding portals would be the higher fees currently charged to broker-dealer members. FINRA's intent to establish a fee structure that minimizes the burden imposed on funding portal members by attempting to set the fees at the minimum necessary to recover FINRA's expected costs may encourage more entrants into crowdfunding activity. As such, the proposed rule change may promote competition in the market for crowdfunding services among funding portals and broker-dealers, increase the provision of capital to startups and small businesses, and lower the costs of capital-raising to these firms. In this way, the proposed rule change may enhance competition for the goods and services provided by those seeking funding from investors through funding portals.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁴ and paragraph (f)(2) of Rule 19b-4 thereunder.³⁵ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-041 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-2015-041. This file number should be included on the subject line if email 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-FINRA-2015-041 and should be submitted on or before November 18, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Brent J. Fields,

Secretary.

[FR Doc. 2015-27371 Filed 10-27-15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76239; File No. SR-FINRA-2015-040]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt the Funding Portal Rules and Related Forms and FINRA Rule 4518

October 22, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 2015, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to adopt 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 text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

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

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

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(2).

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.