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## FINRA Issues Voluntary Interim Form for Crowdfunding Portals

By Louis A. Bevilacqua

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*On January 10, 2013 the Financial Industry Regulatory Authority (“FINRA”) issued a voluntary Interim Form for funding portals (the “Interim Form”). The Interim Form is designed for prospective crowdfunding portals under the Jumpstart our Business Startups Act (the “JOBS Act”), which was enacted on April 5, 2012. Title III of the JOBS Act, which relates to crowdfunding, requires the Securities and Exchange Commission (the “SEC”) and FINRA to promulgate rules before crowdfunding portals can commence operations. The Interim Form permits companies that intend to become funding portals under Title III of the JOBS Act to voluntarily submit to FINRA information regarding their business. FINRA expects that the information received will help it develop rules specific to crowdfunding portals.*

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Crowdfunding generally refers to capital raising by a small company through the sale of small amounts of equity to many investors through the use of a website that is operated by a third party or “intermediary.” Title III of the JOBS Act requires that the intermediary involved in the crowdfunding transaction be registered as either a broker-dealer or a funding portal with FINRA. The JOBS Act created an exemption from the registration requirements of the Securities Act of 1933, as amended, for crowdfunding transactions. Without this exemption, crowdfunding transactions would require the filing of a registration statement with the SEC, a time consuming and costly process that would outweigh the benefits of raising only small amounts of capital. The JOBS Act requires that the SEC and FINRA promulgate rules that implement the crowdfunding provisions of the JOBS Act. Until such rules are promulgated, funding portals cannot legally act as crowdfunding intermediaries.

According to FINRA’s press release, FINRA and the SEC are engaging in an open dialogue about the rules that should apply to funding portals. Once the SEC and FINRA have adopted funding portal rules, FINRA will issue a final funding portal application. FINRA was careful to note in its release that in applying for membership, crowdfunding portals will not be bound by the responses provided on the Interim Form and that all information provided will be kept confidential. FINRA noted that a final application will be

needed before FINRA will be able to grant a funding portal membership. FINRA intends to prepopulate the final applications of funding portals with the information that is submitted on the Interim Form.

The Interim Form is divided into 5 sections. The first section solicits general information about the funding portal such as name, address, website, legal status and jurisdiction and date of formation. The second section requires ownership information, including disclosure of any owner of 5% or more of the funding portal and information regarding certain significant indirect owners. The ownership section of the Interim Form also requires disclosure of subsidiaries and entities that are affiliated with the funding portal that will engage in business relationships that relate to funding portal activities, and whether any of such related parties are registered broker-dealers. The third section of the Interim Form requires disclosure of all contributions of equity capital or debt financing made available to the funding portal's business. The fourth section of the Interim Form requires disclosure regarding the management of the funding portal, including the name, title and, if registered with FINRA, the CRD number of each person associated with the funding portal that will be engaged in its management, direction or supervision. This section of the Interim Form also requires disclosure of "bad boy" items such as past adverse actions by state or federal authorities with respect to a registration or licensing. Finally, the fifth section of the Interim Form requires disclosure regarding business relationships, business model (e.g., the type of securities that will be presented to investors, any limitations on the types of issuers, how issuers will be presented, etc.) and the forms and sources of compensation that the funding portal and persons associated with the funding portal will receive (e.g., whether the compensation will be transaction-based, referral-based, flat fee, from issuers, from investors, etc.). Funding portals are required to disclose any relationships with escrow agents, transfer agents and custodians of investor funds and securities, and brokers and dealers.

Disclosure of how the funding portal will address the JOBS Act requirements relating to investor education, mitigation of fraud and protection of privacy is also required along with an indication of whether the funding portal will use any pre-dispute arbitration agreements in its business.

FINRA is also asking prospective funding portals to supplement the information in the Interim Form with any additional information or documents that they believe would be helpful.

The filing of an Interim Form is a way for funding portals to educate FINRA on the funding portal business and, it is hoped, will result in regulations that facilitate and do not overly restrict funding portal operations. The benefits to filing an Interim Form seem to be limited to obtaining a bit of a head start on the completion of the final FINRA application form, which will be prepopulated with information from the Interim Form. That being said, there does not seem to be much of a downside to filing an Interim Form. The more information that FINRA receives prior to implementing its crowdfunding rules the better the chance that those rules will function properly.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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