

**SUPPORTING STATEMENT**  
**for the Paperwork Reduction Act Information Collection Submission for**  
**Crowdfunding Rules 400-404 (Funding Portals)**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.* (2012).

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Jumpstart Our Businesses Act of 2012 (the “JOBS Act”) added new Securities Act of 1933 (“Securities Act”) Section 4(a)(6),<sup>1</sup> which provides an exemption from the registration requirements of Securities Act Section 5 for certain crowdfunding transactions. To qualify for the exemption under Section 4(a)(6), crowdfunding transactions by an issuer must meet specified requirements, including that transactions must be conducted through an intermediary that either is registered as a broker or is registered as a new type of entity called a “funding portal.” Title III adds Securities Exchange Act of 1934 (“Exchange Act”) Section 3(h), which requires the Commission to adopt rules to exempt, either conditionally or unconditionally, “funding portals” from having to register as brokers or dealers pursuant to Exchange Act 15(a)(1).

Pursuant to Title III, the Commission proposed Exchange Act Rules 400 through 404 and Form Funding Portal on October 23, 2013, in order to create a regulatory scheme for funding portals and to exempt funding portals from having to register as brokers or dealers.<sup>2</sup>

The collections of information required under proposed Rules 400 through 404 would be mandatory for all funding portals.

Rule 400 requires each person applying for registration with the Commission as a funding portal to file electronically with the Commission Form Funding Portal.

Rule 400(a) requires a funding portal to become a member of the Financial Industry Regulatory Authority or any other applicable national securities association registered under Section 15A of the Exchange Act.

Rule 400(b) requires a funding portal to file an amendment to Form Funding Portal if any information previously submitted on Form Funding Portal becomes inaccurate for any reason.

Rule 400(c) provides that a funding portal can succeed to the business of a predecessor funding portal upon the successor filing a registration on Form Funding Portal and the predecessor filing a withdrawal on Form Funding Portal.

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<sup>1</sup> Title III amended Securities Act Section 4 to add Section 4(6); however, Title II of the JOBS Act also amended Securities Act Section 4 and inserted subsections (a) and (b). The U.S. Code implemented the amendment by adding paragraph (6) at the end of subsection (a).

<sup>2</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. 66428, 66559-62 (Nov. 5, 2013) (“Regulation Crowdfunding”).

Rule 400(d) requires a funding portal to promptly file a withdrawal of registration on Form Funding Portal upon ceasing to operate as a funding portal.

Rule 400(e) states that duplicate originals of the applications and reports provided for in this section must be filed with surveillance personnel designated by any registered national securities association of which the funding portal is a member.

Rule 400(f) requires a funding portal to obtain and maintain fidelity bond coverage that has a minimum coverage of \$100,000, cover any associated persons, and meet any other applicable requirements as set forth by the national securities association of which it is a member.

Rule 400(g) requires a nonresident funding portal to: (1) obtain a written consent and power of attorney appointing an agent for service of process in the United States; (2) furnish the Commission with the name and address of its agent for services of process on Schedule C of Form Funding Portal; (3) certify that it can, as a matter of law, provide the Commission and any national securities association of which it is a member with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission; and (4) provide the Commission with an opinion of counsel and certify on Schedule C on Form Funding Portal that the firm can, as a matter of law, provide the Commission and such national securities association with prompt access to its books and records and can, as a matter of law, submit to onsite inspection and examination by the Commission and the national securities association.<sup>3</sup>

Rule 403(a) requires a funding portal to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder relating to its business as a funding portal.

Rule 403(b) provides that a funding portal must comply with privacy rules.<sup>4</sup>

Rule 404 requires all registered funding portals to maintain, for not less than five years, the first two in an easily accessible place, true, accurate, and current books and records relating to their funding portal activities.

## **2. Purpose and Use of the Information Collection**

Form Funding Portal will help ensure that the Commission can make information about funding portals transparent and easily accessible to the investing public, including issuers and obligated persons who engage funding portals; investors who may purchase securities through offerings on funding portals; and other regulators. Further, the information provided on Form Funding Portal will expand the amount of publicly available information about funding portals,

<sup>3</sup> See proposed Rule 400(g) of Regulation Crowdfunding. Exchange Act Section 3(h)(1) (C) permits us to impose, as part of our authority to exempt funding portals from broker registration, “such other requirements under [the Exchange Act] as the Commission determines appropriate.”

<sup>4</sup> As proposed, privacy requirements were provided under proposed Rule 403(c). See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66561.

including disciplinary history. Consequently, the final rules and forms will allow issuers and the investing public, as well as others, to become more fully informed about funding portals in a more efficient manner.

In addition, the requirement that each funding portal register with the Commission on Form Funding Portal will help ensure that the Commission has information to oversee respondents and their activities in the crowdfunding securities market effectively. In particular, the information provided in Form Funding Portal will be used in oversight of funding portals, including, among other things, assessing a funding portal's application and performing examinations of funding portals. Moreover, Form Funding Portal will enable the Commission to obtain an accurate estimate of the number of funding portals; analyze data regarding the various types of funding portals; and evaluate the disciplinary history of funding portals and associated persons, including regulatory, civil, and criminal proceedings.

The requirement that a funding portal file amendments to Form Funding Portal will help ensure the availability of up-to-date information about funding portals and their associated persons. In addition, the requirement that a funding portal file Form Funding Portal-W to withdraw from registration will inform the Commission that a funding portal is no longer engaging in funding portal activities.

The requirement that a funding portal make and keep books and records will help to ensure that records of the respondent's funding portal activities, as well as the activities of its associated persons, exist. The Commission and other regulators could potentially request books and records during an examination to evaluate the funding portal's compliance with the Exchange Act, the rules thereunder, as well as for other regulatory purposes.

The requirement that a nonresident funding portal complete Schedule C of Form Funding Portal, furnish an agent for service of process, and make certain certifications, will help minimize legal or logistical obstacles that the Commission may encounter when attempting to effect service, conserve Commission resources, and avoid potential conflicts of law. The requirement that a nonresident funding portal provide an opinion of counsel on Form Funding Portal will help ensure that such nonresident funding portal can provide access to its books and records and submit to inspection and examination by the Commission.

### **3. Consideration Given to Information Technology**

The rules will require respondents and registered funding portals to electronically file Forms Funding Portal, Funding Portal/A, and Funding Portal-W through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR"). By requiring submission of information through EDGAR, Commission staff will be able to efficiently retrieve and analyze the data it needs, which should enhance the Commission's ability to carry out its mission with respect to funding portal activities effectively. Issuers, the general public, and others will also be able to access information about funding portals electronically through the Commission's EDGAR system. Information submitted on Form Funding Portal will also be ASCII or HTML format, which may improve the Commission staff's ability to retrieve and analyze data and could allow funding issuers, the general public and others to perform better research into funding portals.

The rules will also require funding portals to make and keep books and records relating to its funding portal activities. Rule 404(c) permits funding portals to maintain and preserve the required records on electronic storage media.

#### **4. Duplication**

In adopting these rules, the Commission sought to design a registration process that is similar to other registration processes administered by the Commission. The rules are based on rules applicable to broker-dealers and investment advisers; similarly, Form Funding Portal is based on Form BD, Form MA, and Form ADV. To the extent market participants are familiar with these existing registration processes, the Commission believes that using similar processes to register funding portals will create efficiencies for market participants.

Form Funding Portal, while modeled primarily on Form BD, Form MA, and Form ADV, is designed to capture information regarding the activities of funding portals and the markets that they serve that would not otherwise be captured in other forms. This information will permit the Commission to decide whether to accept an application for registration; to manage the Commission's regulatory and examination programs; and to make such information available to FINRA to better inform its regulation of funding portals. In addition, having information about funding portals in a single location could improve the funding portal selection process.

In addition, requiring funding portals to file a registration form specifically tailored to their funding portal activities is consistent with the broader public interest to make available to the public information about funding portals. The Commission believes that persons seeking to compile, compare, and analyze data pertaining to the entire universe of registered funding portals, and regulators overseeing compliance with the rules and regulations applicable to funding portals, should be able to access relevant information easily within one system.

With respect to the recordkeeping requirements, the Commission has requested documents that are not duplicative to any other Commission requests of funding portals.

#### **5. Effect on Small Entities**

Paragraph (a) of Rule 0-10 under the Exchange Act provides that, for purposes of the Regulatory Flexibility Act, "[w]hen used with reference to a broker or dealer, the Commission has defined the term "small entity" to mean a broker or dealer "small broker-dealer" that: (1) had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release."<sup>5</sup> Currently, based on FOCUS Report data,<sup>6</sup> there are 871 broker-dealers that are classified as "small" entities for purposes of the Regulatory Flexibility Act.<sup>7</sup> We apply comparable criteria to funding portals that would register under the proposed regulation. Based

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<sup>5</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66549 n.1113 (citing 17 CFR 240.0-10(c))

on discussions with industry participants, we estimate that, of the anticipated 50 funding portals we expect to register under the proposed regulation, 30 would be classified as “small” entities for purposes of the Regulatory Flexibility Act.<sup>8</sup>

The Commission notes that funding portals are required by statute to register with the Commission. As such, the final rules and forms would affect funding portals required to register with the Commission, including small entities. The Commission does not believe differing compliance or reporting requirements or an exemption from coverage of the final rules and forms, or any part thereof, for small funding portals would be appropriate or consistent with investor protection. Because the Commission believes that the protections of Title III of the JOBS Act are intended to apply equally to clients of both large and small funding portals, it would be inconsistent with the purposes of the Exchange Act to specify different requirements for small funding portals under the final rules and forms. Thus, the final rules and forms are designed to impose only those burdens necessary to accomplish the objectives of the JOBS Act and minimize any significant adverse impact on small funding portals.

## **6. Consequences of Not Conducting Collection**

The collection of information under the final rules and forms is designed to establish a permanent registration regime and establish certain recordkeeping requirements for funding portals, as provided in Title III of the JOBS Act. The permanent registration regime will allow the Commission to retrieve and analyze the data it needs more efficiently, which should enhance the Commission’s ability to carry out its mission with respect to funding portal activities effectively. In addition, the permanent registration regime could improve the process through which issuers and investors select funding portals and incentivize funding portals not to engage in misconduct. Absent the collection of information, funding portals would not have a permanent mechanism through which to satisfy the requirement in Section 3(h) of the Exchange Act that the Commission exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker-dealer under Section 15(a)(1) of the Exchange Act. In addition, less frequent collection of this information would not allow the Commission and other regulators, issuers or investors to access up-to-date information about funding portals.

## **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

Since Rule 400(b) requires registered funding portals to file amendments to Form Funding Portal if certain information contained in the forms become inaccurate, it is possible for a registered funding portal to report information to the Commission more often than quarterly. However, this collection of information is necessary to ensure that the Commission, obligated

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<sup>6</sup> See *id.* at 66549 n.1114 (“FOCUS Reports, or ‘Financial and Operational Combined Uniform Single’ Reports, are monthly, quarterly, and annual reports that broker-dealers generally are required to file with the Commission and/or self-regulatory organizations pursuant to Exchange Act Rule 17a-5 (17 CFR 240.17a-5)”).

<sup>7</sup> See *id.* at 66549 n.1115 (citing 17 CFR 240.0-10(a)).

<sup>8</sup> For PRA purposes, the number of small business entities is calculated by multiplying the number of respondents by the 30/50 percentage or 60%.

persons, as well as the public have access to current information regarding funding portals registered with the Commission.

Rule 404(a) requires funding portals to maintain and preserve books and records for a period of not less than five years, the first two in an easily accessible place. This rule is modeled on Exchange Act Rules 17a-3 and 17a-4, and Rule 204-2 under the Investment Advisers Act, and OMB has previously approved that collection with the same five-year retention period. This collection of information would help to ensure that records exist of the respondent's business activities and of its associated persons, and that the records could potentially be requested by the Commission and other regulators during an examination to evaluate the funding portal's compliance with the Exchange Act, the rules thereunder, and FINRA rules, as well as for other regulatory purposes.

## **8. Consultations Outside the Agency**

The Commission has issued a release soliciting comment on the new "collection of information" requirements and associated paperwork burdens. A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission's public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 C.F.R. 1320.11(f).

## **9. Payment or Gift**

Not applicable.

## **10. Confidentiality**

To the extent the Commission receives confidential information pursuant to submissions on proposed Form Funding Portal, such information would be kept confidential, subject to the provisions of applicable law (e.g., Freedom of Information Act, 5 U.S.C. § 552 (2012)). In particular, the collection of information may include social security numbers of sole proprietors in Form Funding Portal that do not have an EIN number. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act. Additionally, Form Funding Portal requires respondents to report their private residential addresses.

In the forms, in each place where an respondent is asked to provide a social security number, foreign identity number, private residential address, or a date of birth, guidance is provided stating that the information will not be included in publicly available versions of the form. In addition, at various other places in the forms that ask for an address, the respondent is asked to indicate whether the address provided in response is a private residence and is advised that, if so, the address would not be included in publicly available versions of the form.

## 11. Sensitive Questions

As discussed above in Item 10, the collection of information includes Personally Identifiable Information (“PII”).<sup>9</sup> In particular, the collection of information may include SSNs of funding portals that do not have an EIN number.<sup>10</sup>

The Commission has also published a System of Records Notice for the collection of information relating to funding portals.<sup>11</sup> In addition, a Privacy Impact Assessment (“PIA”) has been completed for the EDGAR system.<sup>12</sup>

## 12. Burden of Information Collection

### a. Rule 400: Registration of Funding Portals

#### i. Form Funding Portal: Application for Funding Portal Registration

The initial application for funding portals under Form Funding Portal is a one-time reporting burden. The Commission estimates this collection of information would apply to approximately 50 funding portals during the first year and each year thereafter, totaling 150 during the first three years following effectiveness of the rule. This estimate assumes that, upon effectiveness of the proposed rules, about 15% of the approximately 200 U.S.-based crowdfunding portals<sup>13</sup> currently in existence would participate in securities-based crowdfunding and that the number of crowdfunding portals would grow at 60% per year over the next three years.<sup>14</sup> Therefore, we estimate that an average of approximately 50 respondents would register

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<sup>9</sup> The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

<sup>10</sup> In addition, the forms will also request data on date of birth, foreign identification number, and private residential addresses.

<sup>11</sup> See *System of Records Notices* SEC-55, SEC-49 and SEC-1 available at <http://www.sec.gov/about/privacy/secprivacyoffice.htm>.

<sup>12</sup> The PIA will be included in the PRA submission to OMB.

<sup>13</sup> This estimate is based in part on an industry estimate that, as of April 2012, there were approximately 200 non-securities-based crowdfunding portals operating in the United States. See Massolution, *Crowdfunding Industry Report: Market Trends, Composition and Crowdfunding Platforms* 16 (Abridged) (May 2012), available at <http://www.crowdsourcing.org/document/crowdfunding-industry-report-abridgedversion-market-trends-composition-and-crowdfunding-platforms/14277> (“Massolution”).

<sup>14</sup> A worldwide survey of crowdfunding portals indicated that, in 2011, approximately 14.8% of the surveyed crowdfunding portals (mostly based in Europe) participated in “equity-based” crowdfunding. *Id.* Also, the total number of crowdfunding portals worldwide grew by an estimated 60% from 2011 to 2012. *Id.* at 13.

as funding portals annually.<sup>15</sup> Of those 50 funding portals, we estimate that two would be nonresident funding portals. These estimates are based in part on current indications of interest expressed in responses to FINRA’s voluntary interim form for funding portals. The Commission also estimates that approximately 50 new funding portals will register on Form Funding Portal each year for the first three years. This estimate is based on Form BD registration data. Over the three years of the information collection, the total estimated number of Form Funding Portal respondents would be 150.<sup>16</sup>

We estimate the burden for registering as a funding portal with us based upon the existing burdens for completing and filing Form BD.<sup>17</sup> Consequently, we estimate that it will take a resident funding portal 2.75 hours to complete Form Funding Portal. For the first year, the total hours required for resident funding portals to register with us would be approximately 137.5 hours.<sup>18</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden for the completion and submission of Form Funding Portal would be 412.5 hours, or 137.5 hours per year<sup>19</sup> when annualized over three years. The total burden per respondent would be 2.75 hours, or 0.92 hours per year<sup>20</sup> when annualized over three years.**

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<sup>15</sup> 200 U.S.-based crowdfunding portals × 15% (estimated percentage of crowdfunding portals that would participate in securities-based crowdfunding) = 30 funding portals that would participate in securities-based crowdfunding in the first year. Assuming 60% growth over three years, the number of registered funding portals would be 30 during the first year, 48 during the second year and 77 during the third year. The average over three years is approximately 50 funding portals per year  $((30 + 48 + 77) \div 3 = 52$ , or approximately 50).

<sup>16</sup> 50 (estimated number of Form Funding Portal applicants Y<sup>1</sup>) + 50 (estimated number of Form Funding Portal applicants Y<sup>2</sup>) + 50 (estimated number of Form Funding Portal applicants Y<sup>3</sup>) = 150.

<sup>17</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66541 n.1075 (“While it is likely that the time necessary to complete Form BD varies depending on the nature and complexity of the entity’s business, we previously estimated that the average time necessary for a broker-dealer to complete and file an application for broker-dealer registration on Form BD would be approximately 2.75 hours. We also estimate that the time burden to register as a funding portal on Form Funding Portal would be, for the purposes of this PRA discussion, the same, based upon the time required to complete and file Form BD because the information required for that form is similar.”).

<sup>18</sup> 2.75 hours/respondent × 50 funding portals Y<sup>1</sup> = 137.5 hours. In addition, those entities that register as nonresident funding portals would face an additional burden accounted for *infra* A.12.v. at 12.

<sup>19</sup> Y<sup>1</sup> (2.75 hours × 50 new funding portals) + Y<sup>2</sup> (2.75 hours × 50 new funding portals) + Y<sup>3</sup> (2.75 hours × 50 new funding portals) = 412.5 hours ÷ 3 = 137.5 hours per year.

<sup>20</sup> 412.5 hours (total annual reporting burden) ÷ 150 (total funding portals by end of Y<sup>3</sup>) = 2.75 hours ÷ 3 = .92 hours per respondent.

ii. Registered National Securities Association Membership

The requirement that newly-registered intermediaries would be required to become members of FINRA or any other registered national securities association is a one-time third party disclosure burden.

Based on discussions with industry participants, we estimate that the burden associated with this requirement would be approximately 110 hours per funding portal. Thus for the first year, we estimate that total burden hours required for funding portals to register with FINRA or any other registered national securities association would be approximately 5,500 hours.<sup>21</sup> If all funding portals were to hire a third party to assist in the membership process, we estimate that the hours would be further reduced by at least one-half for a total of 2,750 hours.<sup>22</sup>

**In summary, the Commission estimates that, over a three-year period, the total third-party disclosure burden for becoming a member of a registered national securities association would be 16,500 hours, or 5,500 hours per year<sup>23</sup> when annualized over three years. The total burden per respondent would be 110 hours, or 36.67 hours per year<sup>24</sup> when annualized over three years.**

iii. Form Funding Portal/A: Amendment to Registration

Once registered, funding portals will need to file an amended Form Funding Portal when information it originally reported on Form Funding Portal changes or becomes inaccurate. Such amendments would be an on-going reporting burden. The Commission estimates that each funding portal would need to submit approximately 3.4 amendments per year. This figure is based on the number of amended Forms BD we received from October 1, 2007 through September 30, 2012.<sup>25</sup>

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<sup>21</sup>  $110 \text{ hours} \times 50 \text{ (funding portals Y}^1\text{)} = 5,500 \text{ hours.}$

<sup>22</sup> In estimating the burden costs, the proposing release assumed 90% (45/50) of funding portals would employ an outside party to assist in the membership process. See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66542. If this estimation were used in the burden hours calculation, the total hours would be reduced to 3,025 hours ((55 hours  $\times$  45 funding portals employing an outside party) + (110 hours  $\times$  5 funding portals not employing an outside party)).

<sup>23</sup>  $Y^1 (110 \text{ hours} \times 50 \text{ new funding portals}) + Y^2 (110 \text{ hours} \times 50 \text{ new funding portals}) + Y^3 (110 \text{ hours} \times 50 \text{ new funding portals}) = 16,500 \text{ hours} \div 3 = 5,500 \text{ hours per year.}$

<sup>24</sup>  $16,500 \text{ hours (total hours over three years)} \div 150 \text{ (total funding portals by end Y}^3\text{)} = 110 \text{ hours} \div 3 = 36.67 \text{ hours per respondent.}$

<sup>25</sup> We received 16,365, 17,247, 15,638, 15,491 and 13,271 amended Forms BD during the fiscal years ending 2008, 2009, 2010, 2011 and 2012, respectively, reflecting an average of 15,602 amendment filings per year ((16,365 + 17,247 + 15,638 + 15,491 + 13,271)  $\div$  5 years). As of September 30, 2012, there were 4,653 broker-dealers registered with the Commission. Therefore, we estimate that there are approximately 3.4 amendments (15,602 amended Forms BD  $\div$  4,653 broker-dealers) per registered broker-dealer per year. We estimate that funding portals would need to file amendments at approximately

We estimate that the average time necessary to complete an amended Form Funding Portal would be approximately 0.33 hours (*i.e.*, 20 minutes per amendment). This figure is based on previous estimates of the average time necessary to complete an amended Form BD, which is a similar form.<sup>26</sup> Thus, we estimate that the total annual burden hours for funding portals to complete and file amended Forms Funding Portal would be approximately 56.1 hours for the first year.<sup>27</sup>

**In summary, the Commission estimates that, over a three-year period, the total ongoing reporting burden would be 336.6 hours, or 112.2 hours per year<sup>28</sup> when annualized over three years. The total reporting burden per respondent to amend Form Funding Portal is 2.24 hours, or 0.75 hours per year<sup>29</sup> when annualized over three years.**

iv. Form Funding Portal-W: Notice of Withdrawal from Registration as a Funding Portal

We take into consideration funding portals that register to engage in crowdfunding transactions conducted in reliance on Section 4(a)(6) may eventually decide to withdraw their registration. Withdrawal from Form Funding portal is a one-time reporting burden requiring the entity to complete and file with us Form Funding Portal-W. We estimate that approximately six funding portals may choose to withdraw from registration each year.<sup>30</sup> Over three years of the

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the same rate.

<sup>26</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66542 n.1080 (“We previously estimated that the average time necessary to complete an amended Form BD would be approximately 20 minutes. We estimate that an amendment to Form Funding Portal would take the same amount of time as an amendment to Form BD because the forms are similar.”).

<sup>27</sup>  $50 \text{ (funding portals in } Y^1) \times 3.4 \text{ (amendments per year)} \times 0.33 \text{ hours (estimated time per amendment)} = 56.1 \text{ hours.}$

<sup>28</sup>  $Y^1 (50 \text{ funding portals} \times 3.4 \text{ amendments per year} \times .33 \text{ hours per amendment}) + Y^2 (100 \text{ funding portals} \times 3.4 \text{ amendments per year} \times .33 \text{ hours per amendment}) + Y^3 (150 \text{ funding portals} \times 3.4 \text{ amendments per year} \times .33 \text{ hours per amendment}) = 336.6 \text{ hours} \div 3 = 112.2 \text{ hours per year.}$

<sup>29</sup>  $336.6 \text{ (total annual reporting burden to amend Form Funding Portal)} \div 150 \text{ (total funding portals at the end of } Y^3) = 2.24 \text{ hours} \div 3 = .75 \text{ hours per respondent.}$

<sup>30</sup> We estimate that the percentage of registered funding portals participating in crowdfunding transactions in reliance on Section 4(a)(6) that would withdraw from registration annually would be the same as the percentage of broker dealers that withdraw from registration annually (11%) because of the similarity of the businesses. Of our estimate of 50 registered funding portals participating in crowdfunding transactions in reliance on Section 4(a)(6), we estimate that approximately six funding portals per year would withdraw from registration (50 registered funding portals  $\times$  11% estimated withdrawal rate). For funding portals, a decision to withdraw registration would be required to be reported to us in the same way an amendment would; however, for brokers, withdrawal requires the filing of Form BDW.

information collection, the total estimated number of Form Funding Portal-W respondents would be 18.<sup>31</sup>

The Commission estimates that the average amount of time for a funding portal to complete Form Funding Portal-W would be one hour. This figure is based on the burden estimate for completing Form BDW.<sup>32</sup> Thus, the Commission estimates a total burden of 6 hours for the first year.<sup>33</sup>

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<sup>31</sup> 6 (estimated number of Form Funding Portal-W applicants Y<sup>1</sup>) + 6 (estimated number of Form Funding Portal-W applicants Y<sup>2</sup>) + 6 (estimated number of Form Funding Portal-W applicants Y<sup>3</sup>) = 18 applicants.

<sup>32</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66541 n.1076.

<sup>33</sup> 1 hour (burden for Form Funding Portal-W) × 6 funding portals (estimated number of Form Funding Portal-W applicants Y<sup>1</sup>) = 6 hours.

**In summary, the Commission estimates that, over a three-year period, the total reporting burden for the completion of Form Funding Portal-W would be 18 hours, or approximately 6 hours per year<sup>34</sup> when annualized over three years. The total one-time reporting burden would be 1 hour per respondent, or 0.33 hours per year<sup>35</sup> when annualized over three years.**

v. Form Funding Portal: Designation of U.S. Agent for Service of Process and Opinion of Counsel for Nonresident

The designation of a U.S. agent for service of process is a one-time reporting burden. The Commission estimates that there would be approximately two nonresident funding portal respondents each year. Those nonresident funding portal respondents would need to complete Schedule C of Form Funding Portal, provide an opinion of counsel, and hire an agent for service of process. The funding portal estimate is based on the current information from FINRA's voluntary funding portal registration form for funding portals.<sup>36</sup>

The Commission estimates that the average amount of time to complete Schedule C of Form Funding Portal would be 1.5 hours.<sup>37</sup> This figure is based on the burden estimates for completing Form ADV-NR and Form MA-NR. Thus, the Commission estimates that the total burden to complete Schedule C of Form Funding Portal would be approximately 3 hours for the first year.<sup>38</sup> In addition, each nonresident funding portal must provide an opinion of counsel on Form Funding Portal. The Commission estimates that the average initial reporting burden to provide an opinion of counsel would be three hours.<sup>39</sup> This figure is based on burden estimates for Form NA-MR and Form 20-F, a form submitted by certain foreign private issuers, which has a similar opinion of counsel requirement. Thus, Commission estimates that the total internal burden to provide an opinion of counsel would be six hours for the first year.<sup>40</sup> Each nonresident funding portal must hire an agent for the service of process. The Commission estimates that the

<sup>34</sup>  $Y^1 (6 \text{ funding portals} \times 1 \text{ hour}) + Y^2 (6 \text{ funding portals} \times 1 \text{ hour}) + Y^3 (6 \text{ funding portals} \times 1 \text{ hour}) = 24 \text{ hours} \div 3 = 6 \text{ hours per year.}$

<sup>35</sup>  $18 \text{ hours (total burden to complete Form Funding Portal-W, over three years)} \div 18 \text{ (total estimated number of entities withdrawing from Form Funding Portal registration by end of } Y^3) = 1 \text{ hour} \div 3 = .333 \text{ hours per respondent.}$

<sup>36</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66527 n.980.

<sup>37</sup> This figure differs from the Proposing Release. See *id.* at 66541 (“[T]hose entities that register as nonresident funding portals would face an additional burden of half an hour to complete Schedule C, half an hour to hire an agent for the service of process, and one hour to provide an opinion of counsel.”).

<sup>38</sup>  $2 \text{ (firms expected to file Schedule C of Form Funding Portal } Y^1) \times 1.5 \text{ hours (average estimated time to complete Schedule C of Form Funding Portal)} = 3 \text{ hours.}$

<sup>39</sup> This figure differs from the Proposing Release. See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66541 (estimating 1 hour).

<sup>40</sup>  $2 \text{ (nonresident funding portals expected to provide opinion of counsel } Y^1) \times 3 \text{ hours (average estimated time to provide an opinion of counsel)} = 6 \text{ hours.}$

average initial reporting burden to hire an agent for the service of process would be half an hour per nonresident funding portal, or one hour total for the first year.<sup>41</sup>

Thus, the Commission estimates that each nonresident funding portal would face a one-time registration burden of five hours to complete Schedule C, provide an opinion of counsel, and hire an agent for the service of process.<sup>42</sup> After the first year, the Commission estimates there would be approximately two new nonresident funding portal respondents each year. The Commission estimates that these respondents would face the same burden as the first year respondents. Thus, after the first year, the Commission estimates an initial reporting burden of 10 hours per year.<sup>43</sup>

**In summary, the Commission estimates that, over a three-year period, the total additional one-time reporting burden for nonresident funding portal respondents would be 30 hours, or approximately 10 hours per year<sup>44</sup> when annualized over three years. The average burden for each nonresident funding portal would be approximately 5 hours, or 1.67 hours per year<sup>45</sup> when annualized over three years.**

b. Rule 404: Books and Records to Be Made and Maintained by Funding Portals

The maintenance of books and records is an ongoing annual recordkeeping burden. The Commission estimates that this collection of information would apply to 50 funding portals in the first year, 50 additional funding portals in the second year, and 50 additional funding portals in the third year, which totals 150 funding portals for years one through three.

The Commission estimates that the average annual burden for funding portals to comply with the recordkeeping requirements would be approximately 325 hours per respondent.<sup>46</sup> This

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<sup>41</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66541.  $0.5 \text{ hours} \times 2$  (nonresident funding portals expected to register as funding portal Y<sup>1</sup>) = 1 hour.

<sup>42</sup>  $1.5 \text{ hours (to complete Schedule C)} + 3 \text{ hours (to provide opinion of counsel)} + 0.5 \text{ hours (to hire agent for service of process)} = 5 \text{ hours per funding portal, or } 10 \text{ hours total for the first year (} 5 \text{ hours} \times 2 \text{ nonresident funding portals Y}^1\text{)}.$

<sup>43</sup>  $1.5 \text{ hours (Schedule C)} + 3 \text{ hours (opinion of counsel)} + .5 \text{ hours (agent)} \times 2$  (estimated nonresident funding portal applicants) = 10 hours per year, or 20 hours total over years two and three ( $5 \text{ hours} \times 4$  total new nonresident funding portals over Y<sup>2</sup> and Y<sup>3</sup>).

<sup>44</sup>  $6$  (nonresident funding portals expected to register at the end of Y<sup>3</sup>)  $\times 5$  hours (average estimated time to complete Schedule C, provide opinion of counsel, and hire agent for service of process) = 30 hours  $\div 3$  = 10 hours per year.

<sup>45</sup>  $30$  (estimated additional burden to register over three years)  $\div 6$  (estimated number of nonresident funding portals to register over three years) = 5 hours  $\div 3$  = 1.67 hours per respondent.

<sup>46</sup>  $394.16 \text{ hours (recordkeeping burden for Rule 17a-3)} + 254 \text{ hours (recordkeeping burden for Rule 17a-4)} \times 50\% = 324.08$  (or approximately 325 hours).

figure is based on the most recently approved annual recordkeeping burden for broker-dealer compliance with Exchange Act Rule 17a-3 (currently estimated at 394.16 hours per respondent) and Rule 17a-4 (currently estimated at 254 hours per respondent).<sup>47</sup> We expect the burden of the proposed rules may be less than that of Rules 17a-3 and 17a-4. For the purposes of the PRA, we assume that the recordkeeping burden, on average, for a funding portal to comply with the proposed rules would be 50% of the burdens of a broker-dealer to comply with Rules 17a-3 and 17a-4 (although 50% may turn out to be a high estimate). Therefore, we estimate the first year burden to be 325 hours per respondent, or 16,250 hours total for the first year.<sup>48</sup> We expect the ongoing recordkeeping burden for funding portals would also be approximately 325 hours per respondent, because maintaining such records would be consistent each year.

**In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden would be 97,500 hours, or 32,500 hours per year<sup>49</sup> when annualized over three years. The total recordkeeping burden per respondent would be 650 hours, or 216.67 hours per year<sup>50</sup> when annualized over three years.**

c. Rule 403: Compliance Policies and Procedures

All registered funding portals would be required to establish and maintain compliance policies and procedures. Based on discussion with industry participants, we estimate that 50 funding portals in year one would each spend approximately 40 hours to establish written policies and procedures to achieve compliance with the JOBS Act and the rules and regulations thereunder, as required under the proposed rules. This would result in an initial recordkeeping burden of 2,000 hours in the first year.<sup>51</sup> The Commission expects an average of 50 new funding portals to register in each subsequent year, these funding portals must also establish written policies and procedures. Thus, the Commission estimates a total one-time burden of 6,000 hours to establish written policies and procedures over three years.<sup>52</sup>

We estimate that, on an ongoing basis, funding portals would spend approximately 5 hours per year updating, as necessary, the policies and procedures required by the proposed

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<sup>47</sup> See Collections of Information for Exchange Act Rules 17a-3 and 17a-4 (OMB Control Nos. 3235-0033 and 3235-0279), Office of Information and Regulatory Affairs, Office of Management and Budget, *available at* <http://www.reginfo.gov/public/do/PRAMain>.

<sup>48</sup> 325 hours × 50 funding portals in Y<sup>1</sup> = 16,250 hours.

<sup>49</sup> Y<sup>1</sup> recordkeeping burden (325 hours × 50 funding portals) + Y<sup>2</sup> recordkeeping burden (325 hours × 100 funding portals) + Y<sup>3</sup> recordkeeping burden (325 hours × 150 funding portals) = 97,500 hours ÷ 3 = 32,500 hours per year.

<sup>50</sup> 97,500 hours (total recordkeeping burden over three years) ÷ 150 (number of funding portals at the end of Y<sup>3</sup>) = 650 hours ÷ 3 = 216.67 hours per respondent.

<sup>51</sup> 40 hours × 50 funding portals in Y<sup>1</sup> = 2,000 hours.

<sup>52</sup> Y<sup>1</sup> one-time burden (40 hours × 50 new funding portals) + Y<sup>2</sup> one-time burden (40 hours × 50 new funding portals) + Y<sup>3</sup> one-time burden (40 hours × 50 new funding portals) = 6,000 hours.

rules. This would result in an aggregate ongoing recordkeeping burden of 1,500 hours over three years.<sup>53</sup>

**In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden to establish and maintain compliance policies and procedures would be 7,500 hours, or 2,500 per year<sup>54</sup> when annualized over three years. The total estimated burden per funding portal would be 50 hours, or 16.67 hours per year<sup>55</sup> when annualized over three years.**

d. Rule 403: Compliance Privacy

i. Regulation S-P

We estimate that all funding portals would be subject to the requirements of Regulation S-P under the proposed regulation. In developing an estimate we have considered: (1) the minimal recordkeeping burden imposed by Regulation S-P (Regulation S-P has no recordkeeping requirement, and records relating to customer communications already must be made and retained pursuant to other Commission rules); (2) the summary fashion in which information must be provided to investors in the privacy and opt-out notices required by Regulation S-P (the model privacy form adopted by the Commission and the other agencies in 2009, designed to serve as both a privacy notice and an opt-out notice, is only two pages); and (3) the availability of the model privacy form and online model privacy form builder. Given these considerations and with the aid of our institutional knowledge, we estimate that each funding portal would spend, on an ongoing basis, an average of approximately 12 hours per year complying with the information collection requirement of Regulation S-P, for a total of approximately 600 burden hours in the first year.<sup>56</sup>

**In summary, the Commission estimates that, over a three-year period, the total third-party disclosure burden for Regulation S-P would be 3,600 hours, or 1,200 hours per year<sup>57</sup> when annualized over three years. The reporting burden per respondent would be approximately 24 hours per respondent, or approximately 8 hours per year<sup>58</sup> when annualized over three years.**

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<sup>53</sup>  $Y^1$  ongoing burden (5 hours  $\times$  50 funding portals) +  $Y^2$  ongoing burden (5 hours  $\times$  100 funding portals) +  $Y^3$  ongoing burden (5 hours  $\times$  150 funding portals) = 1,500 hours.

<sup>54</sup> 6,000 hours (total one-time burden) + 1,500 hours (total ongoing burden) = 7,500 hours  $\div$  3 = 2,500 hours per year.

<sup>55</sup> 7,500 hours (total burden to establish and maintain compliance policies and procedures)  $\div$  150 (estimated number of funding portals at the end of  $Y^3$ ) = 50 hours  $\div$  3 = 16.67 hours per respondent.

<sup>56</sup> 12 hours  $\times$  50 funding portals in  $Y^1$  = 600 hours.

<sup>57</sup>  $Y^1$  ongoing burden (12 hours  $\times$  50 funding portals) +  $Y^2$  ongoing burden (12 hours  $\times$  100 funding portals) +  $Y^3$  ongoing burden (12 hours  $\times$  150 funding portals) = 3,600 hours  $\div$  3 = 1,200 hours per year.

<sup>58</sup> 3,600 hours (total burden for Regulation S-P over three years)  $\div$  150 (total funding portals at the end of  $Y^3$ ) = 24 hours  $\div$  3 = 8 hours per respondent.

ii. Regulation S-AM

Regulation S-AM would require funding portals to provide a notice to each affected individual informing the individual of his or her right to prohibit such marketing before a receiving affiliate may make marketing solicitations based on the communication of certain consumer financial information from the broker. Based on the discussion with industry participants, we estimate that approximately 20 funding portals would have affiliations that would subject them to the requirements of Regulation S-AM under the proposed regulation in the first year. For each subsequent year, we estimate that approximately the same number of new funding portals each year would also be subject to the requirements of Regulation S-AM. Accordingly, we estimate the total number of funding portals subject to S-AM would be 60 over three years.<sup>59</sup>

We estimate that each new funding portal would require an average one-time burden of 1 hour to review affiliate marketing practices, for a total of 60 hours over three years.<sup>60</sup> We also estimate that each new funding portal would be required to provide notice and opt-out opportunities to consumers pursuant to the requirements of Regulation S-AM and that they would incur an average first-year burden of 18 hours in doing so, for a total estimated burden of 1,080 hours over three years.<sup>61</sup> We estimate that funding portals would incur an ongoing burden related to the requirements of Regulation S-AM to provide notice and opt-out opportunities of approximately 4 hours per respondent per year to create and deliver notices to new investors and record any opt-outs that are received on an ongoing basis, for a total of approximately 480 burden hours over three years.<sup>62</sup>

**In summary, the Commission estimates that, over a three-year period, the total third-party disclosure burden for Regulation S-AM would be 1,620 hours, or 540 hours per year<sup>63</sup> when annualized over three years. The estimated total burden per respondent would be 27 hours, or 9 hours per year<sup>64</sup> when annualized over three years.**

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<sup>59</sup>  $20$  (new funding portals  $Y^1$ ) +  $20$  (new funding portals in  $Y^2$ ) +  $20$  (new funding portals in  $Y^3$ ) =  $60$ .

<sup>60</sup>  $Y^1$  initial burden to review marketing practices ( $1$  hour  $\times$   $20$  new funding portals) +  $Y^2$  initial burden to review marketing practices ( $1$  hour  $\times$   $20$  new funding portals) +  $Y^3$  initial burden to review marketing practices ( $1$  hour  $\times$   $20$  new funding portals) =  $60$  hours.

<sup>61</sup>  $Y^1$  initial burden ( $18$  hours  $\times$   $20$  new funding portals) +  $Y^2$  initial burden ( $18$  hours  $\times$   $20$  new funding portals) +  $Y^3$  initial burden ( $18$  hours  $\times$   $20$  new funding portals) =  $1,080$  hours.

<sup>62</sup>  $Y^1$  ongoing burden ( $4$  hours  $\times$   $20$  funding portals) +  $Y^2$  ongoing burden ( $4$  hours  $\times$   $40$  funding portals) +  $Y^3$  ongoing burden ( $4$  hours  $\times$   $60$  funding portals) =  $480$  hours.

<sup>63</sup>  $60$  hours (to review affiliate marketing practices) +  $1,080$  hours (to provide notice and opt-out opportunities to consumers) +  $480$  hours (to create and deliver notices to new investors and record any opt-outs that are received) =  $1,620$  hours  $\div$   $3$  =  $540$  hours per year.

<sup>64</sup>  $1,620$  hours (total estimated burden over three years)  $\div$   $60$  (estimated number of respondents at the end of  $Y^3$ ) =  $27$  hours  $\div$   $3$  =  $9$  hours per respondent.

iii. Regulation S-ID

Regulation S-ID generally would require funding portals to develop and implement a written identity theft prevention program that is designed to detect, prevent and mitigate identity theft in connection with certain existing accounts or the opening of new accounts. We estimate that all funding portals would need to comply with Regulation S-ID.

Based on our institutional knowledge, we estimate that the initial burden for funding portals to comply with the applicable portions of proposed Regulation S-ID would be (1) 25 hours to develop and obtain board approval of a program; (2) 4 hours to train staff; and (3) 2 hours to conduct an initial assessment of relevant accounts, for a total of 31 hours per funding portal.<sup>65</sup> We estimate that all funding portals would incur this one-time burden, resulting in an aggregate time burden of 4,650 hours over three years.<sup>66</sup>

With respect to the requirements of Regulation S-ID, we estimate that the ongoing burden per year would include: (1) 2 hours to periodically review and update the program, review and preserve contracts with service providers and review and preserve any documentation received from service providers; (2) 4 hours to prepare and present an annual report to a compliance director; and (3) 2 hours to conduct periodic assessments to determine if the entity offers or maintains covered accounts for a total of 8 hours,<sup>67</sup> of which we estimate 7 hours would be spent by internal counsel and 1 hour would be spent by a compliance officer. We estimate that all funding portals would incur this ongoing time burden, resulting in an aggregate burden of 2,400 hours over three years.<sup>68</sup>

**In summary, the Commission estimates that, over a three-year period, the total third-party recordkeeping burden for Regulation S-ID would be 7,050 hours, or 2,350<sup>69</sup> hours annualized over three years. The estimated total burden per respondent would be 47 hours, or 15.67 hours per year<sup>70</sup> when annualized over three years.**

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<sup>65</sup> 25 hours + 4 hours + 2 hours = 31 hours.

<sup>66</sup>  $Y^1$  one-time burden (31 hours  $\times$  50 new funding portals) +  $Y^2$  one-time burden (31 hours  $\times$  50 new funding portals) +  $Y^3$  one time burden (31 hours  $\times$  50 new funding portals) = 4,650 hours.

<sup>67</sup> 2 hours + 4 hours + 2 hours = 8 hours.

<sup>68</sup>  $Y^1$  ongoing burden (8 hours  $\times$  50 funding portals) +  $Y^2$  ongoing burden (8 hours  $\times$  100 funding portals) +  $Y^3$  ongoing burden (8 hours  $\times$  150 funding portals) = 2,400 hours.

<sup>69</sup> 4,650 (total initial burden by the end of  $Y^3$ ) + 2,400 (total ongoing burden by the end of  $Y^3$ ) = 7,050 hours  $\div$  3 = 2,350 hours per year.

<sup>70</sup> 7,050 hours (total estimated burden over three years)  $\div$  150 (estimated number of funding portals by the end of  $Y^3$ ) = 47 hours  $\div$  3 = 15.67 hours per respondent.

e. Summary of Hourly Burdens

The table below summarizes the Commission’s estimates of the total hourly reporting burden for all respondents under Regulation Crowdfunding.

Crowdfunding PRA - Funding Portals - Hourly Burden									
	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Responses Per Year</u>	<u>Initial Burden Per Response Per Year Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Annualized Burden Estimate Per Respondent</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>	<u>Small Business Entities Affected</u>
a.	<u>Rule 400: Registration of Funding Portals</u>								
i.	Form Funding Portal: Application for Funding Portal Registration	Reporting	150	1	0.92	0.00	0.92	137.50	90.0
ii.	Registered National Securities Association Membership	Third-Party Disclosure	150	1	36.67	0.00	36.67	5,500.00	90.0
iii.	Form Funding Portal/A: Amendment to Registration	Reporting	150	3.4	0.00	0.22	0.75	112.20	90.0
iv.	Form Funding Portal-W: Notice of Withdrawal from Registration as a Funding Portal	Reporting	18	1	0.33	0.00	0.33	6.00	10.8
v.	Form Funding Portal: Designation of U.S. Agent for Service of Process and Opinion of Counsel for Nonresident	Reporting	6	1	1.67	0.00	1.67	10.00	3.6
b.	<u>Rule 404: Books and Records to Be Made and Maintained by Funding Portals</u>	Recordkeeping	150	1	0.00	216.67	216.67	32,500.00	90.0
c.	<u>Rule 403: Compliance Policies and Procedures</u>	Recordkeeping	150	1	13.33	3.33	16.67	2,500.00	90.0
d.	<u>Rule 403: Compliance Privacy</u>								
i.	Regulation S-P	Third-Party Disclosure	150	1	8.00	0.00	8.00	1,200.00	90.0
ii.	Regulation S-AM	Third-Party Disclosure	60	1	6.33	2.67	9.00	540.00	36.0
iii.	Regulation S-ID	Recordkeeping	150	1	10.33	5.33	15.67	2,350.00	90.0
							<b>306.33</b>	<b>44,855.70</b>	

**13. Costs to Respondents**

a. Rule 400: Registration of Funding Portals

i. Form Funding Portal: Application for Funding Portal Registration

We estimate that the initial registration cost for a funding portal to register with a national securities association would be approximately \$10,000. This estimate is based on FINRA’s current member application fee structure, which assesses fees depending on the size of the new member respondent. The current member application fee for broker-dealers with 1 to 10 associated registered persons is \$7,500, and the fee for broker-dealers with 11 to 100 associated registered persons is \$12,500.<sup>71</sup> We expect that the size of funding portals that would register

<sup>71</sup> See FINRA, *Revised Fees: Changes to Advertising, Corporate Financing, New Membership and Continuing Membership Application, Central Registration Depository and Branch Office Annual Registration Fees*, FINRA Regulatory Notice 12-32 (June 2012), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/>

with FINRA would be similar, and therefore, our preliminary estimate of FINRA's application fee for funding portals is based on the average of the above fees.<sup>72</sup> Over three years, the total cost across all funding portals would be approximately \$1,500,000.<sup>73</sup>

**In summary, the Commission estimates that, over a three-year period, the total labor cost for all funding portals to complete Form Funding Portal would be approximately \$1,500,000, or \$500,000 per year<sup>74</sup> when annualized over three years. The total labor cost per respondent would be approximately \$10,000, or approximately \$3,333.33 per year<sup>75</sup> when annualized over three years.**

ii. Registered National Securities Association Membership

In addition to the initial registration cost, we estimate that costs associated with completing a membership process with FINRA or any other registered national securities association would be approximately \$7,377,075 across three years.<sup>76</sup> Discussions with industry participants have indicated that most broker-dealers currently hire a third party consultant or attorney to assist in the membership process. Assuming that 90% of new funding portals (45 out of 50 new funding portals each year) would employ an outside party, we estimate total costs charged by the outside party to be \$1,125,000 in the first year (\$25,000/third party assisting funding portals × 45 funding portals),<sup>77</sup> or \$3,375,000 total over three years.<sup>78</sup> As indicated in the Proposing Release,<sup>79</sup> we assume that the intermediary's Chief Compliance Officer or person in a similar position would spend approximately 55 hours assisting in funding portal registration for a

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documents/notices/p127238.pdf. *See also* Proposing Release, 78 Fed. Reg. at 66542 n.1082.

<sup>72</sup>  $(\$7,500 + \$12,500) \div 2 = \$10,000$ .

<sup>73</sup>  $Y^1$  initial registration costs ( $\$10,000 \times 50$  new funding portals) +  $Y^2$  initial registration costs ( $\$10,000 \times 50$  new funding portals) +  $Y^3$  initial registration costs ( $\$10,000 \times 50$  new funding portals) = \$1,500,000.

<sup>74</sup>  $\$1,500,000$  (aggregate initial registration costs)  $\div 3 = \$500,000$  per year.

<sup>75</sup>  $\$1,500,000$  (total labor cost over three years)  $\div 150$  (estimated number of registered funding portals at the end of  $Y^3$ ) =  $\$10,000 \div 3 = \$3,333.33$  per respondent.

<sup>76</sup>  $\$3,375,000$  (*see infra* note 78 and accompanying text) +  $\$3,274,425$  (*see infra* note 81 and accompanying text) +  $\$727,650$  (*see infra* note 82 and accompanying text) =  $\$7,377,075$  total for three years.

<sup>77</sup> Discussions with industry participants indicated that third parties charge between \$25,000 and \$75,000, for an average of \$50,000, to assist applicants seeking to register as broker-dealers. We assume that charges for intermediaries registering as funding portals would be approximately one-half of these costs, for an average of \$25,000. *See* Proposing Release, 78 Fed. Reg. at 66542 n.1083.

<sup>78</sup>  $Y^1$  ( $\$25,000 \times 45$  new funding portals) +  $Y^2$  ( $\$25,000 \times 45$  new funding portals) +  $Y^3$  ( $\$25,000 \times 45$  new funding portals) =  $\$3,375,000$ .

<sup>79</sup> *See Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66542-43.

total approximate cost of \$1,091,475 for the first year (55 hours × \$441/hour × 45 funding portals),<sup>80</sup> or \$3,274,425 total over three years.<sup>81</sup> For the remaining 10% of intermediaries (5 funding portals each year) that would not employ an outside party to assist in the process, we estimate the total cost to be \$242,550 for the first year (110 hours/funding portal respondent × \$441/hour × 5 funding portals), or \$727,650 total over three years.<sup>82</sup>

Funding portals would face an ongoing cost to remain registered with a national securities association. We expect these costs would vary based on the funding portal's size and profitability. The current FINRA annual assessment fee for members that are brokers having annual revenue of up to \$1,000,000 is \$1,200. In addition, FINRA members currently pay \$150 for each principal and each representative of the member entity, up to five principals and representatives, and also pay \$175 for the first 250 branch offices registered by the member. For purposes of the PRA, we assume that funding portals would have on average a total of five principals or representatives (or their equivalent), would maintain fewer than 250 branch offices, and would have annual revenues less than \$1,000,000. Also for purpose of these estimates, we assume that the fees the national securities association would set for funding portals would be the same as those FINRA currently has set for members that are brokers. We do recognize, however, that the national securities association fees for funding portals may be lower than those currently in place for brokers, proportionate to funding portals' more limited scope of activity compared to brokers.<sup>83</sup> Thus, we estimate that on average intermediaries would pay ongoing annual fees to a national securities association of \$2,125 after the year they become members.<sup>84</sup> Thus, we estimate that over three years, funding portals in the aggregate would have ongoing associated costs of \$318,750.<sup>85</sup>

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<sup>80</sup> See *id.* at 66543 n.1084 (“The hourly rate estimate for a Chief Compliance Officer is taken from SIFMA Management Data.”).

<sup>81</sup>  $Y^1 (55 \text{ hours} \times \$441/\text{hour} \times 45 \text{ new funding portals}) + Y^2 (55 \text{ hours} \times \$441/\text{hour} \times 45 \text{ funding portals}) + Y^3 (55 \text{ hours} \times \$441/\text{hour} \times 45 \text{ funding portals}) = \$3,274,425.$

<sup>82</sup>  $Y^1 (55 \text{ hours} \times \$441/\text{hour} \times 5 \text{ new funding portals}) + Y^2 (55 \text{ hours} \times \$441/\text{hour} \times 5 \text{ new funding portals}) + Y^3 (55 \text{ hours} \times \$441/\text{hour} \times 5 \text{ new funding portals}) = \$727,650.$

<sup>83</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66529 n.994 (citing FINRA, *Jumpstart Our Business Startups Act: FINRA Requests Comment on Proposed Regulation of Crowdfunding Activities*, FINRA Regulatory Notice 12–34 (July 2012), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p131268.pdf>) (“In writing rules specifically for registered funding portals, FINRA would seek to ensure that the capital-raising objectives of the JOBS Act are advanced in a manner consistent with investor protection. Commenters are urged to identify the types of requirements that should apply to registered funding portals, taking into account the relatively limited scope of activities by a registered funding portal permitted under the JOBS Act.”).

<sup>84</sup>  $(\$150/\text{principal or representative} \times 5) + \$175 (\text{fewer than 250 branch offices}) + \$1,200 (\text{assessment for up to } \$1,000,000 \text{ in revenue}) = \$2,125.$

<sup>85</sup>  $Y^2 (\$2,125 \times 50 \text{ ongoing funding portals established in } Y^1) + Y^3 (\$2,125 \times 100 \text{ ongoing funding portals established in } Y^1 \text{ and } Y^2) = \$318,750.$

**In summary, the Commission estimates that, over a three-year period, the total labor cost for becoming a member of a registered national securities association would be approximately \$7,695,825, or \$2,565,275 per year<sup>86</sup> when annualized over three years. The total labor cost per respondent would be approximately \$51,305.50, or approximately \$17,101.83 per year<sup>87</sup> when annualized over three years.**

iii. Form Funding Portal/A: Amendment to Registration

Not applicable.

iv. Form Funding Portal-W: Notice of Withdrawal from Registration as a Funding Portal

Not applicable.

v. Form Funding Portal: Designation of U.S. Agent for Service of Process for Nonresident

The Commission estimates that two nonresident funding portals would register each year, for a total of six nonresident funding portals total over three years. These funding portals would face an additional initial cost to complete Schedule C, retain an agent for the service of process, and provide an opinion of counsel to register as a nonresident funding portal. After the first year, nonresident funding portals would face an ongoing cost to maintain the agent for service of process.

The Commission estimates that this initial cost for nonresident funding portals would be approximately \$25,130 to complete Schedule C, retain an agent for the service of process and provide an opinion of counsel.<sup>88</sup> Over three years, the initial additional cost across all nonresident funding portals would be approximately \$150,780.<sup>89</sup>

The Commission believes that nonresident funding portals would be subject to an additional annual cost of \$130 to maintain an agent for the service of process after the first year.<sup>90</sup> Thus, the Commission estimates an ongoing total cost of \$780 over three years.<sup>91</sup>

**In summary, the Commission estimates that, over a three-year period, the total additional cost for all nonresident funding portals to complete Schedule C, hire and**

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<sup>86</sup> \$7,377,075 (aggregate costs associated with initial registration costs) + \$318,750 (aggregate ongoing costs to remain registered) = \$7,695,825 ÷ 3 = \$2,565,275 per year.

<sup>87</sup> \$7,695,825 (total labor cost over three years) ÷ 150 (estimated number of registered funding portals at the end of Y<sup>3</sup>) = \$51,305.50 ÷ 3 = \$17,101.83 per respondent.

<sup>88</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66542.

<sup>89</sup> \$25,130 × 6 (estimated nonresident funding portals at the end of Y<sup>3</sup>) = \$150,780.

<sup>90</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 70741, 78 Fed. Reg. at 66543.

<sup>91</sup> Y<sup>2</sup> (\$130 × 2 existing funding portals established Y<sup>1</sup>) + Y<sup>3</sup> (\$130 × 4 existing funding portals established in Y<sup>1</sup> and Y<sup>2</sup>) = \$780.

**maintain an agent for service of process, and provide an opinion of counsel would be approximately \$151,560, or \$50,520 per year<sup>92</sup> when annualized over three years. The total cost per respondent would be \$25,260 per year,<sup>93</sup> or \$8,420 when annualized over three years.**

b. Rule 404: Books and Records to be Made and Maintained by Funding Portals

We assume that a funding portal's initial recordkeeping cost associated with making and keeping records by a funding portal would not be significantly different from the ongoing recordkeeping cost because maintaining such records would be consistent each year. The most recently approved annual recordkeeping cost for broker-dealer compliance with Rule 17a-3 is currently estimated at \$5,706.67 per respondent. These ongoing recordkeeping costs reflect the costs of systems and equipment development. The most recently approved annual recordkeeping cost for broker-dealer compliance with Rule 17a-4 is currently estimated at \$5,000 per respondent. Given the more limited scope of a funding portal's business as compared to that of a broker, the more limited scope of the proposed books and records rules, and the fact that funding portals would make, deliver (as required) and store records electronically, we expect the annual recordkeeping cost of the proposed rule requirements may be less than that of Rules 17a-3 and 17a-4. For purposes of the PRA, we assume that the annual recordkeeping cost on average for a funding portal to comply with the proposed requirements that records be made and kept would be about 50% less than burdens of a broker-dealer to comply with Rules 17a-3 and 17a-4.

Based on the above, we expect the initial recordkeeping cost for funding portals, therefore, to be approximately \$5,350 per respondent,<sup>94</sup> or \$802,500 total over three years.<sup>95</sup> We also estimate that the ongoing recordkeeping cost for funding portals after the initial year would be approximately \$5,350 per respondent, or \$802,500 over a three-year period.<sup>96</sup>

**In summary, the Commission estimates that, over a three year period, the total cost for all funding portals to comply with Rule 404 would be approximately \$1,605,000, or**

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<sup>92</sup>  $\$150,780$  (initial costs) +  $\$780$  (maintaining agent for service of process) =  $\$151,560 \div 3$  =  $\$50,520$  per year.

<sup>93</sup>  $\$151,560$  (aggregate cost over three years)  $\div 6$  (nonresident funding portals at the end of  $Y^3$ ) =  $\$25,260 \div 3$  =  $\$8,420$  per respondent.

<sup>94</sup>  $\$5,706.67$  (recordkeeping cost for Rule 17a-3) +  $\$5,000$  (recordkeeping cost for Rule 17a-4)  $\times 50\%$  =  $\$5,353$ , or approximately  $\$5,350$ .

<sup>95</sup>  $Y^1$  ( $\$5,350 \times 50$  new funding portals in  $Y^1$ ) +  $Y^2$  ( $\$5,350 \times 50$  new funding portals in  $Y^2$ ) +  $Y^3$  ( $\$5,350 \times 50$  new funding portals in  $Y^3$ ) =  $\$802,500$ .

<sup>96</sup>  $Y^2$  ( $\$5,350 \times 50$  ongoing funding portals established in  $Y^1$ ) +  $Y^3$  ( $\$5,350 \times 100$  ongoing funding portals established in  $Y^1$  and  $Y^2$ ) =  $\$802,500$ .

**\$535,000 per year<sup>97</sup> when annualized over three years. The total cost per respondent would be \$10,700, or \$3,566.67 per year<sup>98</sup> when annualized over three years.**

c. Rule 403: Compliance Policies and Procedures

Not applicable.

d. Rule 403: Compliance Privacy

Not applicable.

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<sup>97</sup> \$802,500 (initial costs) + \$802,500 (ongoing costs) = \$1,605,000 ÷ 3 = \$535,000 per year.

<sup>98</sup> \$1,605,000 ÷ 150 (funding portals at the end of Y<sup>3</sup>) = \$10,700 ÷ 3 = \$3,566.67 per respondent.

e. Summary of Cost Burdens

The table below summarizes the Commission’s estimate of the annual cost burdens for funding portals.

Crowdfunding PRA - Funding Portals - Cost Burden									
	<u>Nature of Information Collection Burden</u>	<u>Type of Burden</u>	<u>Number of Respondents</u>	<u>Number of Responses Per Year</u>	<u>Initial Burden Per Response Per Year Per Respondent</u>	<u>Ongoing Burden Per Response Per Year Per Respondent</u>	<u>Annualized Burden Estimate Per Respondent</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>	<u>Small Business Entities Affected</u>
a.	<u>Rule 400: Registration of Funding Portals</u>								
i.	Form Funding Portal: Application for Funding Portal Registration	Reporting	150	1	\$3,333.33	\$0.00	\$3,333.33	\$500,000.00	90.0
ii.	Registered National Securities Association Membership	Third-Party Disclosure	150	1	\$16,393.50	\$708.33	\$17,101.83	\$2,565,275.00	90.0
iii.	Form Funding Portal/A: Amendment to Registration	Reporting	150	3.4	\$0.00	\$0.00	\$0.00	\$0.00	90.0
iv.	Form Funding Portal-W: Notice of Withdrawal from Registration as a Funding Portal	Reporting	18	1	\$0.00	\$0.00	\$0.00	\$0.00	10.8
v.	Form Funding Portal: Designation of U.S. Agent for Service of Process and Opinion of Counsel for Nonresident	Reporting	6	1	\$8,376.67	\$43.33	\$8,420.00	\$50,520.00	3.6
b.	<u>Rule 404: Books and Records to Be Made and Maintained by Funding Portals</u>	Recordkeeping	150	1	\$1,783.33	\$1,783.33	\$3,566.67	\$535,000.00	90.0
c.	<u>Rule 403: Compliance Policies and Procedures</u>	Recordkeeping	150	1	\$0.00	\$0.00	\$0.00	\$0.00	90.0
d.	<u>Rule 403: Compliance Privacy</u>								
i.	Regulation S-P	Third-Party Disclosure	150	1	\$0.00	\$0.00	\$0.00	\$0.00	90.0
ii.	Regulation S-AM	Third-Party Disclosure	60	1	\$0.00	\$0.00	\$0.00	\$0.00	36.0
iii.	Regulation S-ID	Recordkeeping	150	1	\$0.00	\$0.00	\$0.00	\$0.00	90.0
							\$32,421.83	\$3,650,795.00	

**14. Costs to Federal Government**

There would be no additional costs to the Federal Government.

**15. Reason for Change**

Not applicable. Rules 400 to 404 would be new rules.

**16. Information Collection Planned for Statistical Purposes**

Not applicable. The information collection is not used for statistical purposes.

**17. Display of OMB Approval Date**

We request authorization to omit the expiration date on the electronic version of the form, although the OMB control number will be displayed. Including the expiration date on the

electronic version of this form will result in increased costs, because the need to make changes to the Form may not follow the application's scheduled version release dates.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not involve statistical methods.

