

**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. Information Collection Necessity**

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 adopted Exchange Act Rules 400 through 404 and Form Funding Portal on October 30, 2015, 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 Rules 400 through 404 is 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 a 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.

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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 *Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. 71387, 71545-49 (Nov. 16, 2015) (“*Regulation Crowdfunding*”).

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.

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 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, and will provide the Commission and any registered national securities association of which it becomes a member with prompt access to its books and records and can, as a matter of law, and will submit to onsite inspection and examination by the Commission and any registered national securities association of which it becomes a member; 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 registered national securities association of which it becomes 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 any registered national securities association of which it becomes a member.<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.

Rule 404 requires all registered funding portals to maintain certain books and records relating to their funding portal activities, for not less than five years, the first two in an easily accessible place. Rule 404(e) requires funding portals to furnish promptly to the Commission, its representatives, and the registered national securities association of which the funding portal is a member true, correct, complete and current copies of such records of the funding portal that are requested by the representatives of the Commission and the registered national securities association.

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<sup>3</sup> 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.”

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

Form Funding Portal helps 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 expands the amount of publicly available information about funding portals, including disciplinary history. Consequently, the rules and forms allows 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 helps 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 is 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 enables 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 helps 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 informs 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 helps 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 and 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 helps 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 helps 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 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 can efficiently retrieve and analyze the data it

needs, which enhances 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 is also 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 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. To the extent market participants are familiar with these existing registration processes, the Commission believes that using similar processes to register funding portals creates efficiencies for market participants.

Form Funding Portal, while modeled primarily on Form BD, is designed to capture information regarding the activities of funding portals and the markets that they serve that is not otherwise captured in other forms. This information permits 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**

The Commission notes that funding portals are required by statute to register with the Commission. As such, the rules and forms 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 is 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 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 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 allows the Commission to retrieve and analyze the data it needs more efficiently, which enhances the Commission's ability to carry out its mission with respect to funding portal activities effectively. In addition, the permanent registration regime improves 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 becomes 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 and obligated 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 helps 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 required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

## **9. Payment or Gift**

Not applicable.

## **10. Confidentiality**

To the extent the Commission receives confidential information pursuant to submissions on Form Funding Portal, such information is 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, as well as the social security numbers and dates of birth of direct owners and executive officers that do not have a CRD number. This information is necessary in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act. Guidance is provided in the forms stating that information, such as social security numbers or dates of births, is not included in publicly available versions of the form.

## **11. Sensitive Questions**

Form Funding Portal is the registration application through which intermediaries can register as funding portals. The application is submitted through the EDGAR system. The information collection collects basic Personally Identifiable Information ("PII") that may include name, job title, and work address. The Form does not collect sensitive PII but registrants may include social security number and date of birth of direct owners and executive officers that do not have a CRD number. However, the information collected is related to the entity and not the associated persons. The agency has determined that the information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment ("PIA") of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on January 29, 2016, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>.

## **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. Based on the data as reported in EDGAR filings from May 16, 2016 to June 30, 2018, there are currently 43 registered funding portals. Based on EDGAR filings made from May 16, 2016 to May 16, 2018, 147 companies have submitted Form Funding Portal. For purposes of this PRA, the Commission estimates approximately 74 companies will submit Form Funding Portal each year.<sup>4</sup> Of those funding portals applicants, we estimate one will be a

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<sup>4</sup> 147/2=approximately 74 companies a year.

nonresident funding portal.<sup>5</sup> Of those funding portal applicants, the Commission estimates that the number of new funding portals that complete the registration process each year will be five.<sup>6</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>7</sup> Consequently, we estimate that it takes a resident funding portal 2.75 hours to complete Form Funding Portal. The total hours required for resident funding portals to register with us is approximately 203.5 hours.<sup>8</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 will be 610.5 hours, or 203.5 hours per year<sup>9</sup> when annualized over three years. The total burden per respondent will be 2.75 hours, or 0.92 hours per year<sup>10</sup> when annualized over three years.**

ii. Registered National Securities Association Membership

The requirement that newly-registered intermediaries be required to become members of a registered national securities association is a one-time third party disclosure burden. The Commission does not believe the hour burdens and costs associated with FINRA's membership constitute paperwork burdens and costs attributable to the Commission's rules."<sup>11</sup> Therefore, we are not providing estimates of burdens and costs resulting from membership in a registered national securities association.

iii. Form Funding Portal/A: Amendment to Registration

Once registered, funding portals need to file an amended Form Funding Portal when information it originally reported on Form Funding Portal changes or becomes inaccurate. Such

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<sup>5</sup> Based on data collected from Form Funding Portal, eight funding portals have submitted Schedule C but only one was a nonresident.

<sup>6</sup> The number of funding portals expected to complete the registration process is much lower than the number of funding portals who apply. During the first two years, the amount of interest in applying was much higher due to the availability of other offering exemptions.

<sup>7</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. at 71526 n.1657.

<sup>8</sup>  $2.75 \text{ hours/respondent} \times 74 \text{ funding portals} = 203.5 \text{ hours}$ . In addition, those entities that register as nonresident funding portals will face an additional burden, which is accounted for below. See *infra* A.12.v.

<sup>9</sup>  $(2.75 \text{ hours} \times 74 \text{ new funding portals}) \times 3 = 610.5 \text{ hours} \div 3 = 203.5 \text{ hours per year}$ .

<sup>10</sup>  $610.5 \text{ hours (total annual reporting burden)} \div 222 \text{ (total funding portals applicants by end of Y}^3\text{)} = 2.75 \text{ hours} \div 3 = .92 \text{ hours per respondent}$ .

<sup>11</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. at 71526.

amendments are an on-going reporting burden. The Commission estimates that each funding portal registrant will need to submit approximately 3.7 amendments per year.<sup>12</sup>

We estimate that the average time necessary to complete an amended Form Funding Portal is 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>13</sup> For purposes of this PRA, we assume that of the 74 applicants, only five will complete the registration process.<sup>14</sup> Thus, we estimate that the total annual burden hours for funding portals to complete and file amended Forms Funding Portal will be approximately 58.6 hours for each year.<sup>15</sup>

**In summary, the Commission estimates that the total ongoing reporting burden will be 58.6 hours per year. The total reporting burden per respondent to amend Form Funding Portal will be 3.67 hours per year.**

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 five funding portals may choose to withdraw from registration each year.<sup>16</sup>

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<sup>12</sup> According to data collected from Form Funding Portal, there have been 157 amendments to Form Funding Portal filed. Currently there are 43 registered funding portals. For purposes of this PRA, we have assumed each funding portal files approximately 3.7 amendments a year and only fully registered funding portals have filed amendments.  $157/48=3.7$ . We estimate that the number of funding portals will be 43 in Y1, 48 in Y2 and 53 in Y3. For purposes of this PRA calculation, we assume that there are 48 funding portals each year.

<sup>13</sup> *See Regulation Crowdfunding*, Exchange Act Release No. Exchange Act Release No. 76324, 80 Fed. Reg. at 71526 n.1663 (“We currently estimate that the average time necessary to complete an amended Form BD to be approximately 20 minutes, or 0.33 hours. We estimate that an amendment to Form Funding Portal will take the same amount of time as an amendment to Form BD because the forms are similar.”).

<sup>14</sup> We estimate that the number of funding portals will be 43 in Y1, 48 in Y2 and 53 in Y3. For purposes of this PRA calculation, we assume that there are 48 funding portals each year.

<sup>15</sup>  $(48 \text{ funding portals}) \times 3.7 \text{ (amendments per year)} \times 0.33 \text{ hours (estimated time per amendment)} = 58.6 \text{ hours.}$

<sup>16</sup> We estimate that of funding portals applicants participating in crowdfunding transactions in reliance on Section 4(a)(6), approximately 5 will withdraw from registration annually.



The Commission estimates that the average amount of time for a funding portal to complete Form Funding Portal-W is 0.25 hours. This figure is based on the burden estimate for completing Form BDW.<sup>17</sup> Thus, the Commission estimates a total burden of 1.25 hours for each year.<sup>18</sup>

**In summary, the Commission estimates that, over a three-year period, the total reporting burden for the completion of Form Funding Portal-W will be 3.75 hours, or approximately 1.25 hours per year<sup>19</sup> when annualized over three years. The total one-time reporting burden will be 0.25 hours per respondent, or 0.08 hours per year<sup>20</sup> when annualized over three years.**

v. Form Funding Portal: Completion of Schedule C, 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 will be approximately one nonresident funding portal respondent each year. This nonresident funding portal respondent need to complete Schedule C of Form Funding Portal (including the required certifications), provide an opinion of counsel, and document the appointment of an agent for service of process.

The Commission estimates that the average amount of time to complete Schedule C of Form Funding Portal and make the required certifications is half an hour, to provide an opinion of counsel on Form Funding Portal is one hour, and to document the appointment of an agent for service of process is a half an hour.<sup>21</sup> Therefore, the total one-time reporting burden for each nonresident funding portal respondent is two hours.

**In summary, the Commission estimates that, over a three-year period, the total reporting burden for nonresident funding portal respondents will be 6 hours, or**

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The number of companies to file an application was 157 and the number of withdrawals is 29.

<sup>17</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. 71526 n.1658.

<sup>18</sup>  $0.25 \text{ hours (burden for Form Funding Portal-W)} \times 5 \text{ funding portals (estimated number of Form Funding Portal-W applicants per year)} = 1.25 \text{ hours.}$

<sup>19</sup>  $(5 \text{ funding portals} \times 0.25 \text{ hours}) \times 3 \text{ years} = 3.75 \text{ hours} \div 3 = 1.25 \text{ hours per year.}$

<sup>20</sup>  $3.75 \text{ hours (total burden to complete Form Funding Portal-W, over three years)} \div 15 \text{ (total estimated number of entities withdrawing from Form Funding Portal registration by end of Y}^3\text{)} = 0.25 \text{ hours} \div 3 = 0.08 \text{ hours per respondent.}$

<sup>21</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. at 71526.

**approximately 2 hours per year<sup>22</sup> when annualized over three years. The average burden for each nonresident funding portal will be approximately 2 hours, or 0.67 hours per year<sup>23</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 will apply to 43 funding portals in the first year, 5 additional funding portals in the second year, and 5 additional funding portals in the third year, or an average of 48 funding portals for years one through three.

The Commission estimates that the average annual burden for funding portals to comply with the recordkeeping requirements is approximately 325 hours per respondent.<sup>24</sup> The Commission currently estimates the annual recordkeeping burden for broker-dealer compliance with Rule 17a-3 to be 394.16 hours per respondent, and the most recently approved annual recordkeeping burden for broker-dealer compliance with Rule 17a-4 to be 249 hours per respondent.<sup>25</sup> We expect the burden of the rules will likely 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 rules will be 50% of the burdens of a broker-dealer to comply with Rules 17a-3 and 17a-4. Therefore, we estimate the burden to be 325 hours per respondent, or 15,600 hours per year.<sup>26</sup>

**In summary, the Commission estimates that the total recordkeeping burden will be 15,600 hours per year. The total recordkeeping burden per respondent will be 325 hours per year.**

c. Rule 403: Compliance Policies and Procedures

All registered funding portals will be required to implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder. We estimate that the 15 new funding portals will each spend approximately 40 hours to establish written policies and procedures to achieve compliance with

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<sup>22</sup>  $3 \text{ (nonresident funding portals expected to register at the end of Y}^3) \times 2 \text{ hours (average estimated time to complete Schedule C, provide opinion of counsel, and document the appointment of an agent for service of process)} = 6 \text{ hours} \div 3 = 2 \text{ hours per year.}$

<sup>23</sup>  $6 \text{ (estimated additional burden to register over three years)} \div 3 \text{ (estimated number of nonresident funding portals to register over three years)} = 2 \text{ hours} \div 3 = 0.67 \text{ hours per respondent.}$

<sup>24</sup>  $394.16 \text{ hours (recordkeeping burden for Rule 17a-3)} + 249 \text{ hours (recordkeeping burden for Rule 17a-4)} \times 50\% = 321.58.$

<sup>25</sup> *See Regulation Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. 71531.

<sup>26</sup>  $325 \text{ hours} \times 48 \text{ funding portals} = 15,600 \text{ hours.}$

these requirements. This will result in an initial recordkeeping burden of 600 hours for new funding portals.<sup>27</sup>

We estimate that, on an ongoing basis, funding portals will spend approximately 5 hours per year updating, as necessary, the policies and procedures required by the rules. This will result in an aggregate ongoing recordkeeping burden of 240 hours.<sup>28</sup>

**In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden to establish compliance policies and procedures will be 600 hours, or 200 per year<sup>29</sup> when annualized over three years. The total estimated burden per funding portal will be 40 hours, or 13.33 hours per year<sup>30</sup> when annualized over three years. The total recordkeeping burden to maintain compliance policies and procedures will be 240 hours per year. The total estimated burden per funding portal will be 5 hours per year.**

d. Rule 403: Compliance Privacy

i. Regulation S-P

We estimate that all funding portals will be subject to the requirements of Regulation S-P under the 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 spends, on an ongoing basis, an average of approximately 12 hours per year complying with the information collection requirement of Regulation S-P.

**In summary, the Commission estimates that the total third-party disclosure burden for Regulation S-P is 576 hours per year<sup>31</sup>. The reporting burden per respondent is 12 hours per year.**

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<sup>27</sup> 40 hours × 15 funding portals = 600 hours.

<sup>28</sup>  $Y^1$  ongoing burden (5 hours × 43 funding portals) +  $Y^2$  ongoing burden (5 hours × 48 funding portals) +  $Y^3$  ongoing burden (12 hours × 53 funding portals) = 720 hours ÷ 3 = 240 hours per year.

<sup>29</sup> 600 hours (total one-time burden) ÷ 3 = 200 hours per year.

<sup>30</sup> 40 hours ÷ 3 = 13.33 hours per respondent.

<sup>31</sup>  $Y^1$  ongoing burden (12 hours × 43 funding portals) +  $Y^2$  ongoing burden (12 hours × 48 funding portals) +  $Y^3$  ongoing burden (12 hours × 53 funding portals) = 1,728 hours ÷ 3 = 576 hours per year.

ii. Regulation S-AM

Regulation S-AM will 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. We estimate that approximately 20 funding portals are already subject them to the requirements of Regulation S-AM under the regulation in the first year. For each subsequent year, we estimate that approximately two new funding portals each year will also be subject to the requirements of Regulation S-AM. Accordingly, we estimate the total number of funding portals subject to S-AM will be 26 over three years.<sup>32</sup>

We estimate that each new funding portal requires an average one-time burden of 1 hour to review affiliate marketing practices, for a total of 6 hours over three years.<sup>33</sup> Each new funding portal is required to provide notice and opt-out opportunities to consumers pursuant to the requirements of Regulation S-AM, and we estimate that incur an average one-time burden of 18 hours in doing so, for a total estimated burden of 108 hours over three years.<sup>34</sup> Therefore, the total one-time burden for new funding portals is 114 hours.<sup>35</sup>

We estimate that funding portals will 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 96 burden hours per year.<sup>36</sup>

**In summary, the Commission estimates that the total one-time third-party disclosure burden for Regulation S-AM is 114 hours, or 38 hours per year<sup>37</sup> when annualized over three years. The total third-party disclosure burden for Regulation S-AM is 96 hours per year, or four hours per respondent.**

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<sup>32</sup> 20 funding portals + 2 (new funding portals Y<sup>1</sup>) + 2 (new funding portals in Y<sup>2</sup>) + 2 (new funding portals in Y<sup>3</sup>) = 26.

<sup>33</sup> Y<sup>1</sup> initial burden to review marketing practices (1 hour × 2 new funding portals) + Y<sup>2</sup> initial burden to review marketing practices (1 hour × 2 new funding portals) + Y<sup>3</sup> initial burden to review marketing practices (1 hour × 2 new funding portals) = 6 hours.

<sup>34</sup> Y<sup>1</sup> initial burden (18 hours × 2 new funding portals) + Y<sup>2</sup> initial burden (18 hours × 2 new funding portals) + Y<sup>3</sup> initial burden (18 hours × 2 new funding portals) = 108 hours.

<sup>35</sup> 6 hours + 108 hours = 114 hours.

<sup>36</sup> Y<sup>1</sup> ongoing burden (4 hours × 22 funding portals) + Y<sup>2</sup> ongoing burden (4 hours × 24 funding portals) + Y<sup>3</sup> ongoing burden (4 hours × 26 funding portals) = 288 hours ÷ 3 = 96 hours per year.

<sup>37</sup> 114 hours ÷ 3 = 38 hours per year.

iii. Regulation S-ID

Regulation S-ID generally requires 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 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 Regulation S-ID is (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>38</sup> We estimate that all new funding portals incur this one-time burden, resulting in an aggregate time burden of 465 hours over three years.<sup>39</sup>

With respect to the requirements of Regulation S-ID, we estimate that the ongoing burden per year will 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>40</sup> of which we estimate 7 hours will be spent by internal counsel and 1 hour will be spent by a compliance officer. We estimate that all funding portals will incur this ongoing time burden, resulting in an aggregate burden of 384 hours over three years.<sup>41</sup>

**In summary, the Commission estimates that the initial recordkeeping burden for funding portals to comply with the applicable portions of Regulation S-ID is 465 over a three-year period, or 155 hours per year<sup>42</sup> when annualized over three years. The ongoing recordkeeping burden for Regulation S-ID is 384 hours per year, or 8 hours per respondent.**

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<sup>38</sup> 25 hours + 4 hours + 2 hours = 31 hours.

<sup>39</sup>  $Y^1$  one-time burden (31 hours  $\times$  5 new funding portals) +  $Y^2$  one-time burden (31 hours  $\times$  5 new funding portals) +  $Y^3$  one time burden (31 hours  $\times$  5 new funding portals) = 465 hours.

<sup>40</sup> 2 hours + 4 hours + 2 hours = 8 hours.

<sup>41</sup>  $Y^1$  ongoing burden (8 hours  $\times$  43 funding portals) +  $Y^2$  ongoing burden (8 hours  $\times$  48 funding portals) +  $Y^3$  ongoing burden (8 hours  $\times$  53 funding portals) = 1,152 hours  $\div$  3 = 384 hours per year.

<sup>42</sup> 465 hours  $\div$  3 = 155 hours per year.

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.

	<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>Annualized Burden Estimate Per Respondent</u>	<u>Annualized Hourly Burden Estimate Industry-Wide</u>	<u>Small Business Entities Affected<sup>43</sup></u>
a.	<u>Rule 400: Registration of Funding Portals</u>						
i.	Form Funding Portal: Application for Funding Portal Registration	Reporting	222	1	.92	203.50	133
ii.	Registered National Securities Association Membership	Third-Party Disclosure	-	1	-	-	-
iii.	Form Funding Portal/A: Amendment to Registration	Reporting	48	3.7	1.22	58.6	29
iv.	Form Funding Portal-W: Notice of Withdrawal from Registration as a Funding Portal	Reporting	15	1	0.08	1.25	9
v.	Form Funding Portal: Designation of U.S. Agent for Service of Process and Opinion of Counsel for Nonresident	Reporting	3	.333	.67	2	2
b.	<u>Rule 404: Books and Records to Be Made and Maintained by Funding Portals</u> <u>Initial</u>	Recordkeeping	15	.333	-	-	9
	<u>Ongoing</u>	Recordkeeping	48	1	325	15,600	29
c.	<u>Rule 403: Compliance Policies and Procedures -</u> <u>Initial Burden</u>	Recordkeeping	15	.333	5	200	9
	<u>Ongoing Burden</u>	Recordkeeping	48	1	5	240	29
d.	<u>Rule 403: Compliance Privacy</u>						
i.	Regulation S-P	Third-Party Disclosure	48	1	12	576	29
ii.	Regulation S-AM – Initial Burden	Third-Party Disclosure	6	.333	6.33	38	4
	Ongoing Burden	Third-Party Disclosure	24	1	4	96	14
iii.	Regulation S-ID – Initial Burden	Recordkeeping	15	.333	10.33	155	9
	Ongoing Burden	Recordkeeping	48	1	8	384	29
						<b>17,554.35</b>	

### 13. Costs to Respondents

a. Rule 400: Registration of Funding Portals

i. Form Funding Portal: Application for Funding Portal Registration

Not applicable.

<sup>43</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%.

ii. Registered National Securities Association Membership

As explained in further detail above, the Commission determined not to provide estimates of burdens and costs resulting from membership in a registered national securities association.<sup>44</sup>

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 and Obtain an Opinion of Counsel for Nonresident

The Commission estimates that one nonresident funding portal will register each year, for a total of three new nonresident funding portals total over three years. These funding portals face an additional initial cost to retain an agent for the service of process and provide an opinion of counsel to register as a nonresident funding portal.

The Commission estimates that this initial cost for nonresident funding portals will be approximately \$25,179 to retain an agent for the service of process and provide an opinion of counsel.<sup>45</sup> Over three years, the initial additional cost across all nonresident funding portals will be approximately \$75,537.<sup>46</sup>

**In summary, the Commission estimates that, over a three-year period, the total additional cost for all nonresident funding portals to, retain an agent for service of process, and provide an opinion of counsel is \$75,537, or \$25,179 per year<sup>47</sup> when annualized over three years. The total cost per respondent is \$25,179 , or \$8,393<sup>48</sup> when annualized over three years.**

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<sup>44</sup> See *supra* 12.a.ii.

<sup>45</sup> See *Regulation Crowdfunding*, Exchange Act Release No. 76324, 80 Fed. Reg. at 71527 n. 1665.

<sup>46</sup>  $\$25,179 \times 3$  (estimated new nonresident funding portals at the end of Y<sup>3</sup>) = \$75,537. The Commission originally estimated ongoing costs for retaining an agent for service of process, but after closer review has determined it is not likely that there are ongoing costs for retaining such an agent.

<sup>47</sup>  $\$75,537/3 = \$25,179$  per year.

<sup>48</sup>  $\$25,179 /3 = \$8,393$  per year.

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 is not significantly different from the ongoing recordkeeping cost because maintaining such records is consistent each year. The 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 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 books and records rules, and the fact that funding portals will be required to make, deliver and store records electronically, we expect the annual recordkeeping cost of the rule requirements is likely 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 rule requirements that records be made and kept is 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>49</sup> or \$80,250 total over three years.<sup>50</sup> We also estimate that the ongoing recordkeeping cost for funding portals will be approximately \$5,350 per respondent, or \$256,800 per year.<sup>51</sup>

**In summary, the Commission estimates that, over a three year period, the initial total cost for funding portals to comply with Rule 404 is approximately \$80,250, or \$26,750 per year<sup>52</sup> when annualized over three years. The cost per respondent is \$5,350, or \$1,783 per year<sup>53</sup> when annualized over three years. The ongoing cost is \$256,800 per year, or \$5,350 per respondent.**

c. Rule 403: Compliance Policies and Procedures

Not applicable.

d. Rule 403: Compliance Privacy

Not applicable.

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<sup>49</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>50</sup>  $Y^1 (\$5,350 \times 5 \text{ new funding portals in } Y^2) + Y^2 (\$5,350 \times 5 \text{ new funding portals in } Y^2) + Y^3 (\$5,350 \times 5 \text{ new funding portals in } Y^3) = \$80,250$ .

<sup>51</sup>  $Y^1 (\$5,350 \times 43 \text{ funding portals}) + Y^2 (\$5,350 \times 48 \text{ funding portals}) + Y^3 (\$5,350 \times 53 \text{ funding portals}) = \$770,400 \div 3 = \$256,800 \text{ per year}$ .

<sup>52</sup>  $\$80,250 \div 3 = \$26,750 \text{ per year}$ .

<sup>53</sup>  $\$5,350 \div 3 = \$1,783 \text{ per respondent}$ .



e. Summary of Cost Burdens

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

	<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>Annualized Cost Estimate Per Respondent</u>	<u>Annualized Hourly Cost 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	74	1	-	-	44
ii.	Registered National Securities Association Membership	Third-Party Disclosure	-	1	-	-	-
iii.	Form Funding Portal/A: Amendment to Registration	Reporting	48	3.7	-	-	29
iv.	Form Funding Portal-W: Notice of Withdrawal from Registration as a Funding Portal	Reporting	15	1	-	-	9
v.	Form Funding Portal: Designation of U.S. Agent for Service of Process and Opinion of Counsel for Nonresident	Reporting	3	.333	\$8,393	\$25,179	2
b.	<u>Rule 404: Books and Records to Be Made and Maintained by Funding Portals</u> Initial	Recordkeeping	15	.333	\$1,783	\$26,750	9
	Ongoing	Recordkeeping	48	1	\$5,350	\$256,800	29
c.	<u>Rule 403: Compliance Policies and Procedures – Initial Burden</u>	Recordkeeping	15	.333	-	-	9
	Ongoing Burden	Recordkeeping	48	1	-	-	29
d.	<u>Rule 403: Compliance Privacy</u>						
i.	Regulation S-P	Third-Party Disclosure	48	1	-	-	29
ii.	Regulation S-AM – Initial Burden	Third-Party Disclosure	6	.333	-	-	4
	Ongoing Burden	Third-Party Disclosure	24	1	-	-	14
iii.	Regulation S-ID – Initial Burden	Recordkeeping	15	.333	-	-	9
	Ongoing Burden	Recordkeeping	48	1	-	-	29
						<b>\$308,729</b>	

**14. Costs to Federal Government**

There will be no additional costs to the Federal Government.

**15. Reason for Change**

The reduction in the respondents' burdens and costs is due to a reduction in the estimated number of applications and amendments the staff expects funding portals to file on Form Funding Portal. In addition, the current 43 registered funding portals have already incurred their initial start-up burdens and costs.

**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. Including the expiration date on the electronic version of the 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. The OMB control number will be displayed.

**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.