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Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Jumpstart Our Business Startups Act

Dear Ms. Asquith:

CFA Institute[1] appreciates the opportunity to comment to FINRA ("FINRA" or the "Authority") about possible rules for registered funding portals of FINRA members (the "Members") that were permitted under the Jumpstart Our Business Startups Act (the "Act"). Specifically, FINRA seeks ideas and views on potential crowdfunding rules (the "Consultation"). We welcome the opportunity to provide input as FINRA considers these important regulations.

CFA Institute represents the views of investment professionals before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

Executive Summary

While CFA Institute supports new mechanisms to provide capital to small and medium-sized enterprises, we reiterate the strong concerns we have registered with the Securities and Exchange Commission and with members of Congress about the Act. In particular, we believe that some of its provisions will increase the possibility for fraud through reduced transparency, reduced safeguards against conflicts of interest, and overall lower investor protections.

[1] CFA Institute is a global, not-for-profit professional association of nearly 114,000 investment analysts, advisers, portfolio managers, and other investment professionals in 139 countries, of whom more than 102,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 137 member societies in 59 countries and territories.

These types of funding mechanisms require vetting of investors and issuers, alike, as well as control of portals to reduce the potential for and increase the penalties against market manipulation and mis-selling. In particular, we believe that portals will need to incorporate vetting processes to ensure the eligibility of investors and the amount that they can invest in such offerings are consistent with the law. These portals also will need to ensure the privacy of investor information.

And finally, FINRA, through regulation of such portals, will need to enable investors to vet the quality of such offerings. They can do this through the inclusion of, first, a "Surgeon General" warning label, which spotlights, in red text, the risks of investing in these securities, and second, adherence to company-specific, Regulation S-K disclosures.

Discussion

Our concerns about crowdfunding relate, first, to the vetting of investors by the portals; second, to the vetting of issuers by potential investors; third, to the privacy of investor information; and, fourth, to the potential for faulty investment research. These issues are described more fully in the pages that follow.

Determination of Investor Participation.

As noted in footnote 5 of the Consultation, an issuer relying on the crowdfunding exemption of the Act may not raise more than $2,000, or 5 percent, per year from an investor whose annual income is less than $100,000 per year; or 10 percent of the annual income or net worth of an investor with more than $100,000 in annual income, up to a maximum of $100,000 per year. The Act also limits an investor's total crowdfunding purchases from all issuers during a 12-month period.

As noted in footnote 9 of the Consultation, such portals are prohibited from offering investment advice or recommendations, or from soliciting purchases, sales or offers to buy the securities offered on their websites or portals. Nevertheless, we have strong concerns about the means by which these portals will determine whether and to what degree investors may participate in any such offerings.

We believe that to make such determinations, the portals must have information about potential investors that will ensure the accuracy of such a determination. They also will need to avoid situations where investors provide unverified and faulty information that could allow them to

invest beyond the limits of the law. To make such determinations, however, portals will need to collect highly confidential information about investors' income and net worth. As a consequence, the portals will have to take special precautions to ensure the privacy of that information once it is collected, analyzed, and stored in their systems.

Issuer Disclosures.

In the Consultation, FINRA states that staff at the Securities and Exchange Commission ("SEC") suggested that the Authority draft its own regulations with regard to crowdfunding. The Consultation does not state why SEC staff made this suggestion.

FINRA also notes that any rules it would write in this regard "would seek to ensure that the capital-raising objectives of the JOBS Act are advanced in a manner consistent with investor protection." CFA Institute strongly supports FINRA's perspective in this regard. While we support reasonable efforts to increase opportunities for small companies to access the capital markets for equity and debt funding, we believe this objective should be accomplished without sacrificing important investor protections normally required for selling securities to retail or less-sophisticated investors in the public markets.

We are concerned about these issues due to the fact that the financial market turmoil of recent years has virtually destroyed retail investor confidence. The provisions of the Act that could be used to reduce important investor protections ultimately may worsen investor confidence.

In order to overcome these negative perceptions, investors must be shown by companies and regulators alike that financial abuses will not be tolerated, that conflicts of interest will be disclosed and managed, and that important investor protections will be maintained. And where serious gaps in regulation are created by new legislation like those created by the Act, bold warnings should alert investors to the rollback in information and protections.

In the context of these issues, we offer the following list of disclosures and regulatory requirements that investors will need to properly vet the offerings of companies selling securities through crowdfunding portals.

Regulation S-K. We encourage FINRA to mandate that the portals it regulates require issuing firms to provide the following Regulation S-K disclosures. We believe that this type of information is critical to enable investors to adequately assess the business prospects, performance, financial condition, governance and purposes for such offerings:

- backlog of business;
- the extent to which issuers' businesses are affected by market risks;
- how investors might be diluted by future offerings or issuances of shares;
- how issuers will use the proceeds of share offerings and placements;
- the proper expensing of share-based compensation on issuers' income statements;
- material contracts; and
- the names of number of shares being sold by selling shareowners.

Warning Label. We also have encouraged the SEC to mandate that Act companies include a standard prospectus that uses comparable, uniform and easy-to-understand elements. These prospectuses also should include an investor protection warning label similar to those of other federal government agencies. We believe this type of warning should be used in connection with the offering and sale of any securities, such as those issued under the Act, which allow access to public markets without the full panoply of investor protections under the '33 Act and related regulations. We urge FINRA to require companies issuing securities through Member portals to include similar warnings.

The requirements for this type of warning should be to display it in a bold and prominent manner on the face of any communication, electronic or print, related to the offering of such securities. An example of such a warning is as follows:

These securities are being offered under the JOBS Act which permits exemptions from standard public company disclosure and transparency requirements. These exemptions permit offerings with significantly reduced disclosure, limited and unaudited financial information and very limited auditor review of internal controls over compliance and financial reporting. These securities are highly risky and should be purchased by investors who are skilled in analyzing such risks and are able to withstand a loss of their entire investment.

Other Enhanced Disclosures. We further recommend to FINRA, as we recommended to the SEC, to mandate that Act companies provide the following ongoing disclosures to investors:

- Share issuance made in connection with executive, director, and employee compensation;

  Annual audits included in annual reports to shareowners;

  At least semi-annual unaudited updates of performance and financial condition;

All important company news available in a timely manner through normal, public delivery channels;

Annual identification of all persons or entities holding more than 20% of outstanding equity; and

All related-party transactions.

Furthermore, we urge FINRA to hold issuing-company principals liable for fraudulent representations made during any such offerings or through ongoing disclosures.

Analyst Conflicts of Interest.

As an organization of research analysts and investment professionals, CFA Institute has significant reservations about the Act's provisions that eliminate or weaken barriers between the research and banking functions of companies. Management of real and potential conflicts of interest with regard to investment research should remain a guiding principle of financial market regulation, regardless of whether the research is focused on emerging or established issuers.

As noted above, FINRA points out in the Consultation that crowdfunding portals are not permitted to "offer investment advice or recommendations." Nevertheless, this limited prohibition seems to suggest that Member firms administering such portals may still provide research to such investors so long as that research does not contain investment advice or recommendations. CFA Institute does not support ending established "quiet periods" for research relating to companies engaged in such capital-raising. Allowing Members to publish research reports prior to, and during the execution of, share offerings may amount to information that is more akin to marketing "spin" than diligent research. The dangers to investor trust of such circumstances and the potential for highly misleading information are clear.

Conclusion

As noted above, we strongly support steps to improve employment opportunities, expand our economy and ensure adequate capital is available to small and growing companies. However, we also believe that certain provisions within the Act create further danger to market integrity unless strong disclosure and accountability steps are taken through your rulemaking process. Recognizing that FINRA's crowdfunding portal rules will supplement those of the SEC, we nevertheless believe it is important that the Authority recognize the need for investors to receive

important information about Act companies. Moreover, we support bold efforts on the part of FINRA to adopt the kinds of provisions described above to safeguard markets and investors.

Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or James C. Allen at james.allen@cfainstitute.org or 434.951.5558.

Sincerely,

/s/ Kurt N. Schacht

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Managing Director, Standards and
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/s/ James C. Allen

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Head, Capital Markets Policy
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