

Jumpstart Our Business Startups (JOBS) Act

SEC Approval of FINRA Rule 4518 (Notification to FINRA in Connection with the JOBS Act)

Effective Date of FINRA Rule 4518 Notification Provisions:
January 29, 2016

Effective Date for SEC Regulation Crowdfunding
(Other Than Registration Requirements): May 16, 2016

Executive Summary

The SEC approved new FINRA Rule 4518 as part of FINRA's proposal to establish the new Funding Portal Rules and related forms.¹ This *Notice* provides further guidance on new Rule 4518, which applies to registered broker-dealer members of FINRA that contemplate acting as intermediaries in transactions involving the offer or sale of securities pursuant to the crowdfunding provisions of Title III of the JOBS Act² and the SEC's Regulation Crowdfunding.³ Under the new rule, registered broker-dealer members must provide notification to FINRA, as specified in the rule and as discussed further in this *Notice*, prior to engaging in such activities. FINRA Rule 4518 will become effective on January 29, 2016.⁴

The text of new FINRA Rule 4518 is available in Appendix A. (As discussed further in this *Notice*, members of FINRA that plan to notify FINRA pursuant to the rule must do so through the FINRA Firm Gateway.)

Questions regarding this *Notice* should be directed to:

- ▶ Alissa Robinson, Director, Membership Application Program, at (212) 858-4764 or alissa.robinson@finra.org;
- ▶ Sandra Clarke, Associate Director, Membership Application Program, at (212) 858-4251 or sandra.clarke@finra.org; or
- ▶ Adam Arkel, Associate General Counsel, Office of General Counsel, at (202) 728-6961 or adam.arkel@finra.org.

January 2016

Notice Type

- ▶ New Rule

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Crowdfunding
- ▶ JOBS Act

Referenced Rules & Notices

- ▶ FINRA Rule 4518
- ▶ NASD Rule 1017
- ▶ Regulation Crowdfunding
- ▶ SEA Section 3(a)(80)
- ▶ Securities Act Section 4(a)(6)

Background & Discussion

The JOBS Act, enacted in 2012 with the goal of increasing American job creation and economic growth, contains provisions relating to securities offered or sold through crowdfunding. An intermediary that engages in transactions involving the offer or sale of securities pursuant to the “crowdfunding exemption”⁵ must register with the SEC as a funding portal or broker and become a member of a national securities association.⁶ As such, the JOBS Act contemplates activity by registered broker-dealers pursuant to Title III of the JOBS Act, subject to specified conditions.

In anticipation that registered broker-dealer members of FINRA may intend to act as intermediaries for transactions in connection with the crowdfunding exemption, FINRA has adopted new FINRA Rule 4518. As noted above, the rule applies to registered broker-dealer members. The rule provides that a FINRA member shall notify FINRA, in a manner prescribed by FINRA:

- ▶ prior to engaging, for the first time, in a transaction involving the offer or sale of securities in reliance on the crowdfunding exemption; or
- ▶ within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

Members must provide the required notification to FINRA by visiting the [FINRA Firm Gateway](#) and updating their profile information, as indicated on the “Additional Business Types” section of the “Business Activities” page.

Members should note that, in addition to providing the required notification to FINRA, depending on the facts and circumstances, they may also need to apply for approval of a material change in business operations pursuant to NASD Rule 1017 by filing a continuing membership application (CMA) using Form CMA, and paying related fees, unless they are already approved by FINRA to engage in private placements or underwriting.⁷ FINRA is of the view that members that are already approved by FINRA to engage in private placements or underwriting and that intend to engage in a transaction involving the offer or sale of securities in reliance on the crowdfunding exemption do not need to file a CMA as a material change in business operations.⁸ Members may seek guidance from FINRA staff as to whether a change in business operations will require a CMA application through the materiality consultation process. Please see [Overview of Materiality Consultation Process](#) for additional information.

If you have questions about entitlement to FINRA’s Firm Gateway, please contact the Gateway Call Center at (301) 590-6500.

Endnotes

1. See Securities Exchange Act Release No. 76970 (January 22, 2016), 81 FR 4931 (January 28, 2016) (Notice of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR-FINRA-2015-040); see also Securities Exchange Act Release No. 76239 (October 22, 2015), 80 FR 66348 (October 28, 2015) (Notice of Filing of Proposed Rule Change To Adopt the Funding Portal Rules and Related Forms and FINRA Rule 4518; File No. SR-FINRA-2015-040).
2. See Pub. L. No. 112-106, 126 Stat. 306 (2012). Crowdfunding generally refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors.
3. The SEC adopted Regulation Crowdfunding on October 30, 2015. See Securities Exchange Act Release No. 76324 (October 30, 2015), 80 FR 71388 (November 16, 2015) (Final Rule: Crowdfunding).
4. Broker-dealer members should note that the effective date for Regulation Crowdfunding, other than the registration requirements set forth in that regulation, is May 16, 2016. As such, though members may begin to notify FINRA effective January 29, 2016, it is a violation of the federal securities laws to engage in transactions involving the offer or sale of securities pursuant to the crowdfunding provisions of Title III of the JOBS Act prior to May 16, 2016.
5. See Section 4(a)(6) of the Securities Act of 1933, as amended by the JOBS Act.
6. The term “funding portal” is defined under Section 3(a)(80) of the Securities Exchange Act of 1934 (SEA), as revised by the JOBS Act, and Rule 300(c)(2) under Regulation Crowdfunding. As noted above, the SEC has approved the Funding Portal Rules and related forms that FINRA proposed for funding portals that intend to become FINRA members pursuant to the JOBS Act and Regulation Crowdfunding. See [Regulatory Notice 16-06](#) for more information.
7. Form CMA must be filed through FINRA Firm Gateway.
8. A firm may, however, need to file a CMA to the extent it otherwise is undergoing a change in ownership or control. See NASD Rule 1017.

Appendix A: FINRA Rule 4518

4500. BOOKS, RECORDS AND REPORTS

* * * * *

4518. Notification to FINRA in Connection with the JOBS Act

A member shall notify FINRA, in a manner prescribed by FINRA:

(a) prior to engaging, for the first time, in a transaction involving the offer or sale of securities in reliance on Section 4(a)(6) of the Securities Act; or

(b) within 30 days of directly or indirectly controlling, or being controlled by or under common control with, a funding portal as defined pursuant to Rule 300(c)(2) of SEC Regulation Crowdfunding.

* * * * *