

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rules 300-304 of Crowdfunding (Intermediaries)

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

A. JUSTIFICATION

1. Information Collection Necessity

The Jumpstart our Business Startups Act (the “JOBS Act”)¹ enacted on April 5, 2012 established the foundation for a regulatory structure for startups and small businesses to conduct securities offerings using the Internet through crowdfunding under new Section 4(a)(6) of the Securities Act of 1933 (“Section 4(a)(6)”). The crowdfunding provisions of the JOBS Act require persons who act as intermediaries in a transaction involving the offer or sale of securities pursuant to Section 4(a)(6) to register with the Securities and Exchange Commission (the “Commission”) as a broker or a funding portal.

On October 23, 2013, the Commission proposed Rules 300-304 under the Securities Act of 1933 (“Securities Act”) to impose certain burdens and recordkeeping requirements on intermediaries.² On October 30, 2015, the Commission adopted rules and forms to implement Rules 300-304 of Regulation Crowdfunding.³ The rules are based on an intermediary developing an electronic platform to offer or sell securities in reliance on Section 4(a)(6).

Rule 300 requires an intermediary to be registered with the Commission as a broker or as a funding portal and be a member of a registered national securities association.⁴ Registration for brokers requires the filing of Form BD and, if withdrawing from registration, the filing of Form BDW. Brokers must also promptly amend Form BD when information changes or becomes inaccurate.⁵

Rule 301 requires intermediaries to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary’s platform complies with the requirements in Section 4A(b) of the Securities Act and the related

¹ Pub. L. No. 112-106, 126 Stat. 306 (2012).

² *See Regulation Crowdfunding*, Exchange Act Release No. 70741, (Oct. 23, 2013) 78 Fed. Reg. 66428, 66559-62 (Nov. 5, 2013) (“Proposing Release”).

³ *See Regulation Crowdfunding*, Exchange Act Release No. 76324 (Oct. 30, 2015), 80 Fed. Reg. 71387 (Nov. 16, 2015) (Final Rule) (“Regulation Crowdfunding”).

⁴ Currently, FINRA is the only registered national securities association.

⁵ Registration of funding portals is addressed in a different PRA submission.

requirements in Regulation Crowdfunding. In satisfying this requirement, an intermediary may rely on the representations of the issuer concerning compliance with these requirements unless the intermediary has reason to question the reliability of those representations. Rule 301 further requires intermediaries to have a reasonable basis for believing that an issuer has established means to keep accurate records of the holders of the securities it will offer and sell through the intermediary's platform, provided that an intermediary may rely on the representations of the issuer concerning its means of recordkeeping unless the intermediary has reason to question the reliability of those representations. Rule 301 also requires intermediaries to conduct a background and securities enforcement regulatory history check on each issuer whose securities are to be offered by the intermediary and on each officer, director or beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities to determine whether the issuer or specified person is subject to a disqualification.

Rule 302 provides that no intermediary or associated person of an intermediary may accept an investment commitment in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) until the investor has opened an account with the intermediary and the intermediary has obtained from the investor consent to electronic delivery of materials. The rule further requires intermediaries to deliver educational materials to such investors. Additionally, an intermediary is required to inform investors that any person who promotes an issuer's offering for compensation, whether past or prospective, or who is a founder or an employee of an issuer that engages in promotional activities on behalf of the issuer on the intermediary's platform, must clearly disclose in all communications on the intermediary's platform, respectively, the receipt of the compensation and that he or she is engaging in promotional activities on behalf of the issuer.

Rule 303 requires an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors, in a manner that reasonably permits a person accessing the platform to save, download or otherwise store the information, for a minimum of 21 days before any securities are sold in the offering, during which time the intermediary may accept investment commitments. This information, including any additional information provided by the issuer, must remain publicly available on the intermediary's platform until the offer and sale of securities is completed or cancelled. Rule 303 also requires intermediaries to comply with the requirements related to the maintenance and transmission of funds. An intermediary that is a registered broker is required to comply with the requirements of Rule 15c2-4 of the Securities Exchange Act of 1934 ("Exchange Act") (Transmission or Maintenance of Payments Received in Connection with Underwritings).⁶ An intermediary that is a registered funding portal must direct investors to transmit the money or other consideration directly to a qualified third party that has agreed in writing to hold the funds for the benefit of, and to promptly transmit or return the funds to, the persons entitled thereto in accordance with Regulation Crowdfunding. For purposes of Regulation Crowdfunding, a qualified third party means (i) a registered broker or dealer that carries customer or broker or dealer accounts and holds funds or securities for those persons or (ii) a bank or credit union (where such credit union is insured by National Credit Union

⁶ 17 CFR 240.15c2-4.

Administration) that has agreed in writing either to hold the funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when so directed by the funding portal as described in Regulation Crowdfunding. A funding portal is also required to promptly direct the qualified third party to either (i) transmit funds from the qualified third party to the issuer when the aggregate amount of investment commitments from all investors is equal to or greater than the target amount of the offering; (ii) return to funds to an investor when an investment commitment has been cancelled or (iii) return funds to investors when an issuer does not complete the offering.

The rules also require intermediaries to implement and maintain systems to comply with the information disclosure, communication channels, and investor notification requirements. These requirements include providing disclosure about compensation at account opening (Rule 302), obtaining investor acknowledgements to confirm investor qualifications and review of educational materials (Rule 303), providing investor questionnaires (Rule 303), providing communication channels with third parties and among investors (Rule 303), notifying investors of investment commitments (Rule 303), confirming completed transactions (Rule 303) and confirming or reconfirming offering cancellations (Rule 304).

2. Information Collection Purpose and Use

The provisions of Rule 301 helps ensure that intermediaries take measures to reduce the risk of fraud with respect to transactions made in reliance on Section 4(a)(6). Specifically, the duty placed on intermediaries to have a reasonable basis for believing that an issuer complies with applicable requirements provides an additional layer of assurance that issuers had followed regulations. Likewise, the requirement that intermediaries have a reasonable basis for believing that an issuer has established a means to keep accurate records of security holders aids in ensuring that records exist and can be accessed by regulators, if requested. The requirement that intermediaries conduct a background and securities enforcement regulatory history check on each issuer and specified persons to determine whether the issuer or person is subject to a disqualification helps ensure that Section 4(a)(6) can be appropriately relied upon by the issuer.

The requirement under Rule 302 that an investor open an account with the intermediary provides the intermediary with basic information about the investor and helps ensure that the intermediary knows the identity of the person using its platform. An intermediary's obligation to provide information through electronic delivery of materials helps ensure the timely transmission of information necessary under the proposed rules. The provisions requiring intermediaries to provide educational materials to investors and to inform investors about disclosures relating to promoters aid investors in understanding risks and making appropriate investment decisions. Likewise, the requirement that an intermediary disclose the manner in which it is compensated further informs investors about the offering and any potential conflicts of interest.

Rule 303's provision requiring an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors helps ensure that investors have full and continuing access to this information. The requirements that an intermediary must have a reasonable basis for believing that the investor satisfies investment limitations, obtain certain representations from investors, and obtain a

questionnaire demonstrating certain aspects of an investor's understanding of the investment serve to protect investors. The obligation that intermediaries comply with the requirements related to the maintenance and transmission of funds assists in safeguarding investor funds. Finally, the requirement that intermediaries send notices of investment commitments and confirmations enables investors to track their investments.

The requirements under Rules 302 through 304 mandating that intermediaries implement and maintain systems to comply with information disclosure requirements and communication channels aid information flow to investors. Additionally, an intermediary's development of an electronic platform to offer or sell securities in reliance on Section 4(a)(6) helps facilitate transactions expeditiously and in the manner contemplated by Congress in Title III of the JOBS Act.

3. Consideration Given to Information Technology

The rules require that all crowdfunding transactions under Section 4(a)(6) be conducted through a registered intermediary on an Internet website or other similar electronic medium to help ensure that the offering is accessible to the public and that members of the crowd can share information and opinions. The rules do not permit offerings to be conducted through means other than the Internet or similar electronic medium because allowing other non-electronic means will be inconsistent with the underlying principles of crowdfunding and the statute.

Under the rules, all information to be provided by intermediaries must be provided electronically, and investors are permitted to participate only if they agree to accept electronic delivery of all documents in connection with the offering. Requiring investors to consent to electronic delivery of documents relating to the offering, and requiring that intermediaries provide information electronically, facilitates the ability of the investor, intermediary, and issuer to comply with, and act in a timely manner, with respect to certain requirements of Regulation Crowdfunding.

4. Duplication

Intermediaries are involved in a new market sector. Intermediaries that are brokers will be subject to existing broker-dealer requirements; however, Regulation Crowdfunding was drafted taking into account existing regulation so as to avoid any duplication. Funding portals, in particular, are also subject to FINRA's funding portal rules. FINRA's rules are streamlined to reflect the limited scope of activity permitted by funding portals and do not duplicate information collected by the Commission. As detailed below, the regulatory scheme for intermediaries has been crafted from existing broker rules which are either expressly applied to intermediaries or tailored to fit the new market.

Rule 302 requires intermediaries to open an account for investors, to provide educational materials, and to disclose information about promoters' and the intermediary's compensation. The requirement to open an account is standard practice by brokers in the securities industry. The additional requirements under Rule 302 provide a regulatory framework for the new, Internet-based market and are not duplicative of rules currently in effect.

Rule 303 requires intermediaries to make certain issuer information available, make determinations as to investor qualifications, provide communication channels, give investor notifications concerning commitments, maintain and transmit funds in accordance with the rule, and send confirmations. To avoid duplication, the Commission did not impose obligations on brokers regarding the maintenance and transmission of investor funds beyond those currently required by existing Rule 15c2-4, to which they are already subject. To tailor the regulatory scheme to the new market, however, Rule 303(f)(2) allows an intermediary to be exempt from the confirmation requirements of Exchange Act Rule 10b-10⁷ (Confirmation of Transactions) if the intermediary satisfies certain requirements outlined in Regulation Crowdfunding. All other requirements under Rule 303 are new requirements and not duplicative.

Rule 301 (requiring an intermediary to take measures to reduce the risk of fraud) and Rule 304 (requiring intermediaries to give notices regarding certain events related to an offering) are tailored to the new crowdfunding market for which rules are not yet in place.

5. Effect on Small Entities

The Commission's rules do not define "small business" or "small organization" for purposes of intermediaries involved in the offer or sale of securities in reliance on Section 4(a)(6). Intermediaries are required by statute to register with the Commission. As such, the final rules and forms affect intermediaries, which can be 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 entities is appropriate or consistent with investor protection or with the Commission's understanding of Congress's intent to have the Commission register intermediaries and oversee their activities. 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 entities.

6. Consequences of Not Conducting Collection

The collection of information under the rules and forms is designed to establish a regulatory framework for intermediaries. The 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 intermediaries involved in the offer and sale of securities in reliance on Section 4(a)(6) effectively. Absent this registration regime, funding portals would not have a permanent mechanism through which to satisfy the requirement in the JOBS Act that they register with the Commission. Additionally, the consequence of not imposing other obligations on intermediaries would be contrary to the purposes of the JOBS Act.

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

⁷ 17 CFR 240.10b-10.

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

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

The records required by Rules 301 through 304 are available only for the examination of the SEC staff, state securities authorities, and self-regulatory organizations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552 (2012), and the SEC's rules thereunder (17 CFR 200.80(b)(4)(iii)), the SEC does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation. This information is useful in connection with the Commission's enforcement and examination functions pursuant to Section 15B(c) of the Exchange Act. Nonetheless, as stated in the instructions to the Form BD, social security numbers ("SSNs") are not required to be given. Furthermore, SSNs are not included in publicly available versions of the form.

11. Sensitive Questions

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information ("PII"). The agency has determined that a system of records notice ("SORN") and privacy impact assessment ("PIA") are not required in connection with the collection of information.

12. Information Collection Burden

The rules require intermediaries to register with us as either a broker or funding portal. Based on information collected from Forms C-U collected from the date of effectiveness of the rules through June 30, 2018, there are 52 intermediaries registered with the Commission, including 43 funding portals and 9 broker-dealers. We also believe that 5 intermediaries per year that are not already registered as brokers will choose to be registered as funding portals in Y2 and Y3 and 5 intermediaries in Y2 and Y3 that are already registered as brokers with the Commission will choose to add to their current service offerings by also becoming crowdfunding intermediaries. For purposes of this PRA analysis, we have assumed that there are 48 funding portal registrants, 5 of which are new intermediaries and 14 broker-dealer registrants, 5 of which are new to crowdfunding.

a. Development and Maintenance of Intermediary Platform

The rules are based on an intermediary developing an electronic platform to engage in transactions involving the offer or sale of securities in reliance on Section 4(a)(6). A broker or funding portal that develops its initial platform in-house incurs an initial time burden associated with setting up its system. We estimate that intermediaries creating the initial platform in-house typically have a team of approximately 4 to 6 developers that work on all aspects of platform development, including, but not limited to, front-end programming, data management, systems analysis, communication channels, document delivery, and Internet security. To develop a platform in-house, we estimate that intermediaries spend an average of 1,500 hours for planning, programming and implementation.⁸

If we assume that half of the 10 newly-registered intermediaries each year develop their initial platforms in-house, the total number of intermediary respondents is 10⁹ with a total initial one-time burden of 15,000 hours over the three-year period.¹⁰

We estimate that annually updating the features and functionality of an intermediary's platform requires approximately 20% of the hours required to initially develop the platform, for an average burden of 300 hours per year. We assume that each year half of the intermediaries update their systems accordingly. The total ongoing burden will be 27,900 hours over the three-year period including the newly-registered intermediaries from each year before.¹¹

In summary, the Commission estimates that, over a three-year period, the total burden for the development and maintenance of an intermediary platform will be 42,900 hours, or 14,300 hours per year¹² when annualized over three years. We estimate that approximately half of this burden is a recordkeeping burden, and half is a third-party disclosure burden.

b. Measures to Reduce the Risk of Fraud

The rules require intermediaries to have a reasonable basis for believing that an issuer seeking to offer and sell securities in reliance on Section 4(a)(6) through the intermediary's

⁸ This average takes into account intermediaries that will develop a brand new platform and those that will modify an existing platform to function in accordance with Regulation Crowdfunding.

⁹ 5 (estimated number of intermediaries Y^2) + 5 (estimated number of intermediaries Y^3) = 10 .

¹⁰ Y^2 (1,500 hours \times 5 new intermediaries) + Y^3 (1,500 hours \times 5 new intermediaries) = 15,000 hours.

¹¹ (300 hours \times 31 intermediaries) \times 3 years = 27,900 hours.

¹² 15,000 hours (burden for developing an intermediary platform in-house, over three years) + 29,700 hours (burden to update system, over three years) = 42,900 hours \div 3 = 14,300 hours per year.

platform complies with the requirements in Section 4A(b) and the related requirements in Regulation Crowdfunding.¹³ The rules also require intermediaries to have a reasonable basis for believing that an issuer has established means to keep accurate records of the holders of the securities it offers and sells through the intermediary's platform. For both requirements, an intermediary may reasonably rely on the representations of the issuer, unless the intermediary has reason to question the reliability of those representations.

For the purposes of the PRA analysis, we expect that 100% of intermediaries will rely on the representations of issuers. This imposes an estimated time burden in the first year of five hours per intermediary to establish standard representations it will request from issuers, and 6 minutes per intermediary per issuer to obtain the issuer representation. These estimates are consistent with estimates we have used for other regulated entities to obtain similar documentation, such as consents, from customers. Based on our estimate that there will be approximately 480¹⁴ offerings per year, and that there will be approximately 62 intermediaries¹⁵, we calculate that each intermediary will facilitate approximately 8 offerings per year.¹⁶ Therefore, we estimate that for the 20 new intermediary respondents, the total initial one-time burden will be 116 hours over the three-year period.¹⁷

We believe that the ongoing time burdens for this requirement will be approximately one hour per intermediary per year to review and check that the standard representations it requests from issuers remain appropriate, and 6 minutes per intermediary per issuer to obtain the representation. Therefore, we estimate that the ongoing total burden hours necessary for intermediaries to rely on the representations of the issuers will be approximately 335 hours over the three-year period.¹⁸

¹³ See Rule 301(a) of Regulation Crowdfunding.

¹⁴ According to filings made on Form C-U with the Commission, 960 crowdfunding offerings were initiated from May 16, 2016 to June 30, 2018 for an average of approximately 480 offerings conducted over approximately two years.

¹⁵ Y^1 (52 intermediaries) + Y^2 (62 intermediaries) + Y^3 (72 intermediaries) = 186 intermediaries/3=62 intermediaries

¹⁶ $480 \text{ offerings} \div 62 = 7.7$.

¹⁷ Y^1 ((5 hours/intermediary x 10 new intermediaries) + (6 minutes/issuer x 8 offerings x (10 new intermediaries))) + Y^2 ((5 hours/intermediary x 10 new intermediaries) + (6 minutes/issuer x 8 offerings x (10 new intermediaries))) = 116 hours.

¹⁸ (1 hour/intermediary x 62 intermediaries) + (6 minutes/issuer x 8 offerings x (62 intermediaries)) x 3 = 335 hours.

In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden associated with measures taken to reduce the risk of fraud will be 451 hours or 150 hours per year¹⁹ when annualized over three years.

c. Account Opening: Accounts and Electronic Delivery

The rules provide that no intermediary or associated person of an intermediary may accept an investment commitment in a transaction involving the offer or sale of securities made in reliance on Section 4(a)(6) until the investor has opened an account with the intermediary and consented to electronic delivery of materials.²⁰ This requirement imposes certain information gathering and recordkeeping burdens on intermediaries. For the purposes of the PRA, we expect that the functionality required for an investor to open an account with an intermediary and obtain consents will result in an initial time burden of approximately 10 hours per intermediary in the first year. Therefore, for the 20 new intermediaries there will be a total initial one-time burden of 200 hours over the three-year period.²¹

We believe that the ongoing time burdens for this requirement is significantly less than the initial time burden, and thus we are estimating approximately two hours per intermediary per year, to review and assess the related processes. Therefore, we estimate that the ongoing total burden hours necessary for this functionality will be approximately 372 hours over the three-year period.²²

In summary, the Commission estimates that, over a three-year period, the total recordkeeping burden associated with account opening will be 572 hours, or 191 hours per year²³ when annualized over three years.

d. Account Opening: Educational Materials

The rules require intermediaries to provide educational materials to investors²⁴ about the risks and costs of investing in securities offered and sold in reliance on Section 4(a)(6). Given that the intermediary determines what electronic format will prove most effective in

¹⁹ 116 hours (burden to develop and obtain standard issuer representations, over three years) + 335 hours (burden associated with ongoing review of representations, over three years) = 451 hours ÷ 3 = 150.33 hours per year.

²⁰ See Rule 302(a) of Regulation Crowdfunding.

²¹ $Y^2 (10 \text{ hours/intermediary} \times 10 \text{ new intermediaries}) + Y^3 (10 \text{ hours/intermediary} \times 10 \text{ new intermediaries}) = 200 \text{ hours.}$

²² $(2 \text{ hours/intermediary} \times 62 \text{ intermediaries}) \times 3 = 372 \text{ hours.}$

²³ 200 hours (burden associated with opening accounts and obtaining consents to electronic delivery of materials, over three years) + 372 hours (burden associated with ongoing reviews, over three years) = 572 hours ÷ 3 = 191 hours per year.

²⁴ See Rule 302(b) of Regulation Crowdfunding.

communicating the requisite contents of the educational material, the costs for intermediaries to develop the educational material varies widely. For the purposes of the PRA, we are assuming that half of the intermediaries will develop their educational materials in-house, potentially including online presentations and written documents, and that the other half will employ third-parties to produce educational materials, such as professional-quality online video presentations. We estimate that, to develop their non-video educational materials in-house, each intermediary will incur an initial time burden of approximately 20 hours. Therefore, we estimate that the total number of new intermediary respondents will be 10 with a total initial one-time burden of 200 hours over the three-year period.²⁵

Assuming that half of the intermediaries will develop their educational materials in-house, we expect that these intermediaries also will update their educational materials in-house, as needed. We estimate that to update their educational materials in-house, each intermediary will incur an ongoing time burden of approximately 10 hours per year. Therefore, we estimate that the ongoing total burden hours will be approximately 930 hours over the three-year period.²⁶

In summary, the Commission estimates that, over a three-year period, the total third-party disclosure burden associated with educational materials will be 1,130 hours, or 377 hours per year²⁷ when annualized over three years. This is a third-party disclosure burden.

e. Account Opening: Promoters

The rules require an intermediary, at the account opening stage, to disclose to users of its platform that any person who receives compensation to promote an issuer's offering, or who is a founder or employee of an issuer engaging in promotional activities on behalf of the issuer, must clearly disclose the receipt of compensation and his or her engagement in promotional activities on the platform.²⁸ For purposes of the PRA, we expect that this requirement will result in an estimated time burden of five hours per new intermediary in the first year, to prepare this particular disclosure and incorporate it into the account opening process. Therefore, we estimate that for the 20 new intermediary respondents, the total initial one-time burden of 100 hours over the three-year period.²⁹

²⁵ $Y^2 (20 \text{ hours/intermediary} \times 5 \text{ new intermediaries}) + Y^3 (20 \text{ hours/intermediary} \times 5 \text{ new intermediaries}) = 200 \text{ hours.}$

²⁶ $(10 \text{ hours/intermediary} \times 31 \text{ intermediaries}) \times 3 = 930 \text{ hours.}$

²⁷ $20 \text{ hours (burden on intermediaries engaged in developing educational materials in-house, over three years)} + 930 \text{ hours (burden on intermediaries engaged in updating educational materials in-house, over three years)} = 930 \text{ hours} \div 3 = 376.67 \text{ hours per year.}$

²⁸ See Rule 302(c) of Regulation Crowdfunding.

²⁹ $Y^2 (5 \text{ hours/intermediary} \times 10 \text{ new intermediaries}) + Y^3 (5 \text{ hours/intermediary} \times 10 \text{ new intermediaries}) = 100 \text{ hours.}$

We believe that the ongoing time burdens for this requirement will be approximately one hour per intermediary per year to review and check that the disclosures remain appropriate. Therefore, we estimate that the ongoing total burden hours will be approximately 186 hours over the three-year period.³⁰

In summary, the Commission estimates that, over a three-year period, the total burden associated with preparing the initial disclosure and ongoing reviews of the disclosure will be 286 hours, or 95 hours³¹ per year when annualized over three years. This is a third-party disclosure burden.

f. Issuer Disclosures to be Made Available

The rules requires an intermediary to make publicly available on its platform the information that an issuer of crowdfunding securities is required to provide to potential investors, in a manner that reasonably permits a person accessing the platform to save, download or otherwise store the information, until the offer and sale of securities is completed or cancelled.³²

For purposes of the PRA, our estimate of the hourly burdens related to the public availability of the issuer information is included as part of our estimate of the third-party disclosure hourly burdens associated with overall platform development, as discussed above. The platform functionality includes not only the ability to display, upload and download issuer information as required under the rules, but also the ability to provide users with required online disclosures, as discussed below.

We recognize that, over time, intermediaries may need to update their systems that allow issuer information to be uploaded to their platforms. We do not expect a significant ongoing burden for providing issuer disclosures, primarily because the functionality required for required issuer disclosure information to be uploaded is a standard feature offered on many websites and will not require frequent or significant updates.

g. Other Disclosures to Investors and Potential Investors

Intermediaries are required to implement and maintain systems to comply with the information disclosure, communication channels and investor notification requirements of Regulation Crowdfunding. These requirements include providing disclosure about compensation at account opening, obtaining investor acknowledgements to confirm investor qualifications and review of educational materials, providing investor questionnaires, maintaining communication channels with third parties and among investors, notifying investors

³⁰ (1 hour/intermediary x 62 intermediaries) x 3= 186 hours.

³¹ 100 hours (burden on intermediaries associated with preparing the initial disclosure, over three years) + 186 hours (burden on intermediaries associated with ongoing reviews of disclosure, over three years) = 286 hours ÷ 3 = 95 hours per year.

³² See Rule 303(a) of Regulation Crowdfunding.

of investment commitments, confirming completed transactions and confirming or reconfirming offering cancellations. We expect these functionalities will generally be part of the overall platform development process and costs. We discuss platform development costs above, and note that these include developing the functionality that allow intermediaries to comply with disclosure and notification requirements.

We do not expect a significant ongoing burden for providing disclosures, as required by the final rules, because the functionality required to provide information and communication channels are not likely to require frequent updates. We incorporate the total burden to update the required functionality for processing issuer disclosure and investor acknowledgment information in the total burden estimates relating to platform development discussed above

h. Maintenance and Transmission of Funds

Intermediaries are required to comply with the requirements related to the maintenance and transmission of funds. An intermediary that is a registered broker will be required to comply with the requirements of Rule 15c2-4 of the Exchange Act.³³ An intermediary that is a registered funding portal is required to enter into a written agreement with a qualified third party that has agreed to hold its client funds, or to open a bank account for the exclusive benefit of the investors and issuer, and it also is required to send directions to the qualified third party depending on whether an investing target is met or an investment commitment or offering is cancelled. For purposes of the PRA, we are providing an estimate for the time that a funding portal will incur to enter into on an initial basis, and review and update on an ongoing basis, a written agreement with the qualified third party. We expect that the burden associated with the website functionality required to send directions to third parties is included as part of the platform development discussed above. Based on discussion with industry participants, we estimate that 5 new funding portals will incur an initial burden of approximately 20 hours each to comply with these requirements. Therefore, we estimate that the total number of intermediary respondents is 10,³⁴ with a total initial one-time burden of 200 hours over the three-year period.³⁵

We expect that, on an ongoing basis, a registered funding portal has to periodically review and update its written agreement with the qualified third party to hold its client funds. A

³³ For purposes of this PRA discussion, the burdens associated with this rule, as well as for any other rule to which brokers are subject regardless of whether they engage in transactions pursuant to Section 4(a)(6), are not addressed here; rather, they are included in any OMB approvals for the relevant rule. Rule 15c2-4, however, does not include any information collection requests for purposes of the PRA, and so there is no relevant approval or control number from OMB for this rule.

³⁴ 5 (estimated number of funding portals Y^2) + 5 (estimated number of funding portals Y^3) = 10 .

³⁵ Y^2 (20 hours/funding portal x 5 new funding portals) + Y^3 (20 hours/funding portal x 5 new funding portals) = 200 hours.

registered funding portal also is required to send directions on an ongoing basis to a qualified third party depending on whether an investing target is met or an investment commitment or offering is cancelled. We estimate that funding portals will incur an ongoing annual burden of approximately 5 hours each to comply with these requirements. Therefore, we estimate that the ongoing total burden hours will be approximately 720 hours over the three-year period.³⁶

In summary, the Commission estimates that, over a three-year period, the total third-party disclosure burden associated with maintenance and transmission of funds will be 920 hours, or 307 hours per year³⁷ when annualized over three years.

i. Summary of Hourly Burdens

The table below summarizes the Commission’s estimates of the total hourly reporting burden for intermediaries under Rules 300 to 304 except burdens associated with registration for funding portals, which are included in a separate submission.

| | <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 Affected³⁸</u> |
|------------|---|------------------------|------------------------------|-------------------------------------|--|--|--|
| a. Initial | <u>Development and Maintenance of the Intermediary Platform</u> | | | | | | |
| | i. Recordkeeping | Recordkeeping | 10 | 1 | 250 | 2,500 | 6 |
| | ii. Third-Party Disclosure | Third-Party Disclosure | 10 | 1 | 250 | 2,500 | 6 |
| Ongoing | i. Recordkeeping | Recordkeeping | 31 | 1 | 150 | 4,650 | 18 |
| | ii. Third-Party Disclosure | Third-Party Disclosure | 31 | 1 | 150 | 4,650 | 18 |
| b. Initial | <u>Measures to Reduce the Risk of Fraud</u> | Recordkeeping | 20 | 1 | 1.93 | 39 | 12 |
| Ongoing | | Recordkeeping | 62 | 1 | 1.8 | 112 | 37 |
| c. Initial | <u>Account Opening: Accounts and Electronic Delivery</u> | Recordkeeping | 20 | 1 | 3.33 | 67 | 12 |
| Ongoing | | Recordkeeping | 62 | 1 | 2 | 124 | 37 |
| d. Initial | <u>Account Opening: Educational Materials</u> | Third-Party Disclosure | 10 | 1 | 6.67 | 67 | 6 |
| Ongoing | | Third-Party Disclosure | 31 | 1 | 10 | 310 | 18 |
| e. Initial | <u>Account Opening: Promoters</u> | Third-Party Disclosure | 20 | 1 | 5 | 100 | 12 |

³⁶ Y^1 (5 hours/funding portal x 43 funding portals) + Y^2 (5 hours/funding portal x 48 funding portals) + Y^3 (5 hours/funding portal x 53 funding portals) = 720 hours.

³⁷ 200 hours (burden on funding portal intermediaries associated with initially entering into a written agreement with a qualified third party, over three years) + 720 hours (burden on funding portal intermediaries associated with periodic reviews of written agreements and the ongoing sending of directions, over three years) = 920 hours ÷ 3 = 307hours per year.

³⁸ For PRA purposes, the number of small business entities is calculated by multiplying the number of respondents by the 30/50 percentage or 60%.

| | | | | | | | |
|------------|---|------------------------|----|---|---|---------------|----|
| Ongoing | | Third-Party Disclosure | 62 | 1 | 1 | 62 | 37 |
| f. | <u>Issuer Disclosures to be Made Available</u> | Third-Party Disclosure | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |
| g. | <u>Other Disclosures to Investors and Potential Investors</u> | Recordkeeping | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |
| h. Initial | <u>Maintenance and Transmission of Funds</u> | Third-Party Disclosure | 20 | 1 | 20 | 200 | 12 |
| Ongoing | | Third-Party Disclosure | 48 | 1 | 5 | 240 | 29 |
| | TOTAL | | | | | 15,621 | |

13. Costs to Respondents

a. Development and Maintenance of Intermediary Platform

There is a cost to developing a platform for an intermediary that hires a third-party to develop its platform rather than developing it in-house. We estimate that it will cost an intermediary approximately \$250,000 to \$600,000 to build a new Internet-based crowdfunding portal and all of its basic functionality. For purposes of this PRA, we will use an average of these two numbers or \$425,000.³⁹ Assuming that half of the 20 newly-registered intermediaries hire outside developers to build or to tailor their platforms, the total initial one-time cost will be \$4,250,000 over the three-year period.⁴⁰

We estimate that it will typically cost an intermediary approximately one-fifth of the initial development cost per year to use a third-party developer to provide annual maintenance on an Internet-based crowdfunding portal, including updating and basic functionality, or \$85,000 per year on average.⁴¹ We assume that half of the intermediaries updated their systems accordingly. Therefore, we estimate that the ongoing total cost will be approximately \$7,905,000 over the three-year period.⁴²

³⁹ Our estimate of the average initial external cost per intermediary to develop a crowdfunding platform is the average of the cited range of \$250,000 to \$600,000, or $((\$250,000 + \$600,000) \div 2) = \$425,000$.

⁴⁰ $Y^2 (\$425,000 \times 5 \text{ new intermediaries}) + Y^3 (\$425,000 \times 5 \text{ new intermediaries}) = \$4,250,000$.

⁴¹ Our estimate of the average initial external cost per intermediary to develop a crowdfunding platform is the average of the cited range of \$250,000 to \$600,000, or $((\$250,000 + \$600,000) \div 2) = \$425,000$. One-fifth of the cost of \$425,000 is $(\$425,000 \div 5) = \$85,000$.

⁴² $(\$85,000/\text{intermediary} \times 31 \text{ intermediaries}) \times 3 = \$7,905,000$

In summary, the Commission estimates that, over a three-year period, the total cost for intermediaries to develop a platform will be approximately \$12,155,000, or \$4,051,667 per year⁴³ when annualized over three years.

b. Measures to Reduce the Risk of Fraud

The rules require intermediaries to conduct a background and securities enforcement regulatory history check on each issuer and each officer, director or beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities to determine whether the issuer or such person is subject to a disqualification. We believe most intermediaries employ third parties to perform background and securities enforcement regulatory history checks, and for the purposes of this PRA discussion, we assume that 100% of intermediaries use these third-party service providers in light of the costs of developing the capability to conduct background and securities enforcement regulatory history checks in-house. The cost to perform a background check is estimated to be between \$200 and \$500, depending on the nature and extent of the information provided.⁴⁴ We recognize that some issuers require more than one background check (*e.g.*, for officers or directors of the issuer), and we estimate that intermediaries perform four background checks per issuer, on average. We base this number on the assumption that most crowdfunding issuers are startups and small businesses with small management teams and few owners. For purposes of this PRA, we use an average of these two numbers, or \$350.⁴⁵ Assuming there is an average of approximately 480 offerings made in reliance on Section 4(a)(6) per year, the total estimated initial cost to fulfill the required background and securities enforcement regulatory history checks is \$672,000 per year.⁴⁶ Therefore, we estimate that the total number of intermediary respondents is 62 with a total initial cost of \$2,016,000 over the three-year period.⁴⁷

We believe that, on an ongoing basis, intermediaries will continue to use third-party services to conduct background and securities enforcement regulatory history checks. We also believe that the total estimated ongoing cost for all intermediaries to fulfill the required

⁴³ \$4,250,000 (costs associated with developing an intermediary platform, over three years) + \$7,905,000 (costs associated with updating an intermediary platform, over three years) = \$12,155,000 ÷ 3 = \$4,051,667 per year.

⁴⁴ *See, e.g.*, A Matter of Fact, *Background Check FAQ: Frequently Asked Questions*, available at <http://www.amof.info/faq.htm>. (Matter of Fact is a background check provider accredited by the National Association of Professional Background Screeners and the Background Screening Credentialing Council and states that the cost for a comprehensive background check is \$200 to \$500).

⁴⁵ Our estimated initial cost for all intermediaries to fulfill the required background and securities enforcement regulatory history checks is the average of the cited range of \$200 to \$500, or $((\$200 + \$500) \div 2) = \$350$.

⁴⁶ 480 offerings x \$350 x 4 background checks = \$672,000 per year.

⁴⁷ $Y^1 (\$672,000) + Y^2 (\$672,000) + Y^3 (\$672,000) = \$2,016,000$.

background and securities enforcement regulatory history checks is the same as the estimated initial cost of \$672,000 per year. Therefore, we estimate that the ongoing cost is approximately \$2,016,000 over the three-year period.⁴⁸

In summary, the Commission estimates that, over a three-year period, the total cost for intermediaries to fulfill obligations regarding background and securities enforcement regulatory history checks will be approximately \$4,032,000, or \$1,344,000 per year⁴⁹ when annualized over three years. The total cost per intermediary is approximately \$65,032, or \$21,677 per year⁵⁰ when annualized over three years.

c. Account Opening: Accounts and Electronic Delivery

To the extent an intermediary uses a third party to establish account opening functionality, the initial costs relevant to this requirement will be incorporated into the cost of hiring a third party to develop the platform, discussed above. We do not believe that there are any ongoing costs relevant to this requirement.

d. Account Opening: Educational Materials

For the purposes of this PRA analysis, we assume that half of the intermediaries employ third-party companies to produce educational materials, such as professional-quality online video presentations, instead of developing materials in-house. Public sources indicate that the typical cost to produce a professional corporate training video ranges from approximately \$1,000 to \$3,000 per production minute.⁵¹ For purposes of this PRA, we will use an average of these two numbers or \$2,000.⁵² We assume that, on average, half of the intermediaries will produce a

⁴⁸ $Y^1 (\$672,000) + Y^2 (\$672,000) + Y^3 (\$672,000) = \$2,016,000.$

⁴⁹ $\$2,016,000$ (estimated initial cost for all intermediaries to fulfill the required background and securities enforcement regulatory history checks, over three years) + $\$2,016,000$ (estimated ongoing cost for all intermediaries to fulfill the required background and securities enforcement regulatory history checks, over three years) = $\$4,032,000 \div 3 = \$1,344,000$ per year.

⁵⁰ $\$4,032,000$ (total initial and ongoing cost for all intermediaries to fulfill the required background and securities enforcement regulatory history checks, over three years) $\div 186$ (estimated number of intermediaries which fulfill the requirements regarding background and securities enforcement regulatory history checks, over three years) = $\$65,032 \div 3 = \$21,677$ per respondent.

⁵¹ See, e.g., Lee W. Frederiksen, *What Is the Cost of Video Production for the Web?*, Hinge Marketing, available at <http://www.hingemarketing.com/library/article/what-is-the-cost-of-video-production-for-the-web>.

⁵² Our estimate of the average initial cost for an intermediary to develop and produce educational materials is the average of the cited range of \$1,000 to \$3,000, or $(\$1,000 + \$3,000) \div 2 = \$2,000.$

series of short educational videos that will cover all of the requirements of the final rules, and that the video material is 10 minutes long in total. Based on this assumption, we estimate that the total number of intermediary respondents is 10,⁵³ with a total initial one-time cost of \$200,000, or \$66,667 annualized over the three-year period.⁵⁴

We estimate that, on an ongoing basis, when using a third-party company to update their video educational materials, each intermediary spends approximately half of the initial average cost. We estimate, therefore, that the average ongoing annual cost for an intermediary to update its video educational materials ranges from approximately \$5,000 to \$15,000. For purposes of this PRA, we will use an average of these two numbers or \$10,000.⁵⁵ Therefore, we estimate that the ongoing total cost is approximately \$310,000 each year, or \$930,000 over the three-year period.⁵⁶

In summary, the Commission estimates that, over a three-year period, the total cost for intermediaries which use a third-party company to develop and update their video educational material will be approximately \$1,130,010, or \$376,667 per year⁵⁷ when annualized over three years.

e. Account Opening: Promoters

To the extent an intermediary uses a third party to develop the functionality for this requirement, the initial costs relevant to this requirement will be incorporated into the cost of hiring a third party to develop the platform, discussed above. We do not believe that there are any ongoing costs relevant to this requirement.

f. Issuer Disclosures to be Made Available

We do not expect a significant ongoing cost for providing issuer disclosures, primarily because the functionality required to upload required issuer disclosure information is a standard feature offered on many websites and will not require frequent updates. Because we are including the burdens that are associated with providing issuer disclosures as part of our

⁵³ $10 \text{ (estimated number of intermediaries } Y^2) + 10 \text{ (estimated number of intermediaries } Y^3) = 10.$

⁵⁴ $Y^2 (\$2,000 \times 10 \text{ min} \times 5 \text{ new intermediaries}) + Y^3 (\$2,000 \times 10 \text{ min} \times 5 \text{ new intermediaries}) = \$20,000.$

⁵⁵ Our estimate of the cost for an intermediary to update their educational materials is the average of the cited range of \$5,000 to \$15,000, or $(\$5,000 + \$15,000) \div 2 = \$10,000.$

⁵⁶ $(\$10,000/\text{intermediary} \times 31 \text{ intermediaries}) \times 3 = \$310,000.$

⁵⁷ $\$66,667 \text{ (estimated initial costs for intermediaries using third-party companies to produce professional-quality video materials, over three years)} + \$93,000 \text{ (estimated ongoing costs for intermediaries using a third-party company to update their video educational materials, over three years)} = \$159,667 \div 3 = \$53,222 \text{ per year.}$

estimates for overall platform development, we discuss our cost estimates for ongoing platform development and updates in that section, above.

g. Other Disclosures to Investors and Potential Investors

We recognize that some intermediaries may add the required functionality for processing issuer disclosure and investor acknowledgments by using a third-party developer. We also do not expect there to be a significant ongoing cost for developing the functionality to process these disclosures and acknowledgments, primarily because this functionality will likely not require frequent updates by third-party developers. The total cost to add the required functionality for processing issuer disclosure and investor acknowledgments, as well as to update the required functionality for processing issuer disclosure and investor acknowledgments, is incorporated into the total cost estimates discussed above relating to platform development.

h. Maintenance and Transmission of Funds

For purposes of the PRA, we are not providing any cost estimate for this requirement, because we expect that the cost associated with developing the functionality to send instructions to third parties is included as part of the platform development discussed above.

i. Summary of Cost Burdens

The table below summarizes the Commission’s estimate of the annual cost burdens for intermediaries under Rules 300 to 304 except burdens associated with registration for funding portals, which are included in a separate submission.

| | <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>Development and Maintenance of the Intermediary Platform</u> | | | | | | |
| Initial | i. Recordkeeping | Recordkeeping | 10 | 1 | \$70,833 | \$708,330 | 6 |
| | ii. Third-Party Disclosure | Third-Party Disclosure | 10 | 1 | \$70,833 | \$708,330 | 6 |
| Ongoing | i. Recordkeeping | Recordkeeping | 31 | 1 | \$42,500 | \$1,317,500 | 19 |
| | ii. Third-Party Disclosure | Third-Party Disclosure | 31 | 1 | \$42,500 | \$1,317,500 | 19 |
| b. | <u>Measures to Reduce the Risk of Fraud</u> | Recordkeeping | 62 | 1 | \$21,677.42 | \$1,344,000 | 37 |
| c. | <u>Account Opening: Accounts and Electronic Delivery</u> | Recordkeeping | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |
| d. Initial | <u>Account Opening: Educational Materials</u> | Third-Party Disclosure | 10 | 1 | \$6,667 | \$66,667 | 6 |
| Ongoing | | Third-Party Disclosure | 31 | 1 | \$10,000 | \$310,000 | 19 |
| e. | <u>Account Opening: Promoters</u> | Third-Party Disclosure | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |
| f. | <u>Issuer Disclosures to be Made Available</u> | Third-Party Disclosure | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |
| g. | <u>Other Disclosures to Investors and Potential Investors</u> | Recordkeeping | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |
| h. | <u>Maintenance and Transmission of Funds</u> | Third-Party Disclosure | | | Estimate included in a. <u>Development of the Intermediary Platform</u> | | |

| | | | | | | | |
|--|-------|--|--|--|--|-------------|--|
| | TOTAL | | | | | \$5,772,327 | |
|--|-------|--|--|--|--|-------------|--|

14. Costs to Federal Government

There will be no additional costs to the Federal Government.

15. Changes in Burden

The burden declined because (1) in the adopting release, the Commission overestimated the number of entities that would become crowdfunding intermediaries, and (2) the 52 existing intermediaries have already incurred the initial burdens of developing their platforms, opening accounts, etc.

16. Information Collection Planned for Statistical Purposes

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

17. Approval to Omit OMB Expiration 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 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. 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.