

was not conducted in compliance with part 58 of this chapter, a brief statement of the reason for the noncompliance.

(x) The submission does not contain a statement for each clinical investigation involving human subjects that it was conducted in compliance with the institutional review board regulations in part 56 of this chapter, or was not subject to those regulations, and that it was conducted in compliance with the informed consent regulations in part 50 of this chapter.

(xi) The submission does not include financial certification or disclosure statements, or both, as required by part 54 of this chapter, accompanying any clinical data submitted.

(k) *Withdrawal of consideration.* (1) FDA may withdraw consideration of a TEA submission or a safety and effectiveness data submission if:

(i) The sponsor requests that its submission be withdrawn from consideration, or

(ii) FDA deems the submission to be withdrawn from consideration due to the sponsor's failure to act on the submission or failure to respond to communications from FDA.

(2) Before FDA deems a submission withdrawn under paragraph (k)(1)(ii) of this section, FDA will notify the sponsor of the submission. If, within 30 days from the date of the notice from FDA, the sponsor requests that FDA not withdraw consideration of the submission, FDA will not deem the submission to be withdrawn.

(3) If FDA withdraws consideration of a submission under paragraph (k)(1) of this section, FDA will post a notice of withdrawal to the docket. Information that has been posted to the public docket for the TEA at the time of the withdrawal (such as a notice of eligibility or a safety and effectiveness data submission that has been accepted for filing and posted to the docket) will remain on the public docket.

(4) If FDA withdraws consideration of a submission under paragraph (k)(1) of this section, the timelines under § 330.15(c) will no longer apply as of the date of withdrawal, and the submission will not be included in the metrics under § 330.15(b).

■ 3. Add § 330.15 to subpart B to read as follows:

§ 330.15 Timelines for FDA review and action on time and extent applications and safety and effectiveness data submissions.

(a) *Applicability.* This section applies to the review of a condition in a time and extent application (TEA) submitted under § 330.14 for consideration in the over-the-counter (OTC) drug monograph system. This section does not apply to:

(1) A sunscreen active ingredient or combination of sunscreen active ingredients, and other conditions for such ingredients, or

(2) A non-sunscreen active ingredient or combination of non-sunscreen active ingredients and other conditions for such ingredients submitted in a TEA under § 330.14 prior to November 27, 2014, subject to section 586F(a)(1)(C) of the Federal Food, Drug, and Cosmetic Act.

(b) *Metrics.* FDA will maintain and update annually, a publicly available posting of metrics for the review of TEAs and safety and effectiveness data submissions that are subject to the timelines in this section. The posting will contain the following information for tracking the extent to which the timelines set forth in paragraph (c) of this section were met during the previous calendar year.

(1) Number and percent of eligibility notices or ineligibility letters issued within 180 days of submission of a TEA;

(2) Number and percent of filing determinations issued within 90 days of submission of a safety and effectiveness data submission;

(3) If applicable, number and percent of feedback letters issued within 730 days from the date of filing;

(4) Number and percent of notices for proposed rulemaking issued within 1,095 days from the date of filing;

(5) Number and percent of final rules issued within 912 days of closing of the docket of the proposed rulemaking; and

(6) Total number of TEAs submitted under § 330.14.

(c) *Timelines for FDA review and action.* FDA will review and take an action within the following timelines:

(1) Within 180 days of submission of a TEA under § 330.14(c), FDA will issue a notice of eligibility or post to the docket a letter of ineligibility, in accordance with § 330.14(d) and (e).

(2) Within 90 days of submission by the sponsor of a safety and effectiveness data submission, FDA will issue a filing determination in accordance with § 330.14(j). The date of filing begins the FDA timelines in paragraphs (c)(3) and (4) of this section.

(3) Within 730 days from the date of filing, if the condition is initially determined not to be GRASE for OTC use in the United States, FDA will inform the sponsor and other interested parties who have submitted data of its determination by feedback letter in accordance with § 330.14(g)(4).

(4) Within 1,095 days from the date of filing of a safety and effectiveness data submission, FDA will issue a notice of proposed rulemaking to either:

(i) Include the condition in an appropriate OTC monograph(s), either by amending an existing monograph(s) or establishing a new monograph(s), if necessary; or

(ii) Include the condition in § 310.502 of this chapter.

(5) Within 912 days of the closing of the docket of the proposed rulemaking under paragraph (c)(4) of this section, FDA will issue a final rule.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016-07612 Filed 4-1-16; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010 and 1023

RIN 1506-AB29

Amendments to the Definition of Broker or Dealer in Securities

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN, a bureau of the Department of the Treasury, is proposing amendments to the definitions of “broker or dealer in securities” and “broker-dealer” under the regulations implementing the Bank Secrecy Act. This rulemaking would amend those definitions explicitly to include funding portals that are involved in the offering or selling of crowdfunding securities pursuant to section 4(a)(6) of the Securities Act of 1933. The consequence of those amendments would be that funding portals would be required to implement policies and procedures reasonably designed to achieve compliance with the Bank Secrecy Act requirements currently applicable to brokers or dealers in securities. The proposal to specifically require funding portals to comply with the Bank Secrecy Act regulations is intended to help prevent money laundering, terrorist financing, and other financial crimes.

DATES: Written comments on this Notice of Proposed Rulemaking (“NPRM”) must be submitted on or before June 3, 2016.

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506-AB29, by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Include RIN 1506-AB29 in the submission. Refer to Docket Number FINCEN-2014-0005.

• *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-AB29 in the body of the text.

Please submit comments by one method only. Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: The public dockets for FinCEN can be found at Regulations.gov. **Federal Register** notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of the notice. FinCEN uses the electronic, Internet-accessible dockets at Regulations.gov as their complete, official-record docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket. In general, FinCEN will make all comments publicly available by posting them on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1-800-767-2825 or 1-703-905-3591 (not a toll free number) and select option 3 for regulatory questions. Email inquiries can be sent to frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56) (“USA PATRIOT Act”) and other legislation, which legislative framework is commonly referred to as the Bank Secrecy Act (“BSA”),¹ authorizes the Secretary of the Treasury (“Secretary”) to require financial institutions to keep records and file reports that “have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”² In addition, the Secretary is authorized to impose anti-money laundering (“AML”) program requirements on financial institutions.³ The Secretary has delegated to the Director of FinCEN the

authority to implement, administer, and enforce compliance with the BSA and its implementing regulations.⁴

The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102-550) (“Annunzio-Wylie”).⁵ Annunzio-Wylie authorizes the Secretary to issue regulations requiring financial institutions to implement programs to guard against money laundering, maintain records considered useful in criminal, tax, or regulatory investigations or proceedings, and report suspicious transactions.⁶ When prescribing minimum standards for AML programs, FinCEN must “consider the extent to which the requirements imposed under [the AML program requirement] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.”⁷ Pursuant to these authorities, FinCEN has issued regulations requiring brokers or dealers in securities to report suspicious transactions and implement AML programs.⁸

II. Background Information

A. The Effect of the JOBS Act and the Securities and Exchange Commission Crowdfunding Rule on the Scope of the Definitions of Brokers or Dealers in Securities and Broker-Dealers Under the Implementing Regulations of the BSA

The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, establishes the foundation for a regulatory structure for startups and small businesses to raise funds by offering and selling securities through crowdfunding⁹ without having to

⁴ Treasury Order 180-01 (Jul. 1, 2014).

⁵ 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Act; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the “Money Laundering Suppression Act”), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325, to require designation of a single government recipient for reports of suspicious transactions. As amended by the USA PATRIOT Act, subsection (g)(1) states generally that “the Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.”

⁶ Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103-325; See also 31 U.S.C. 5318(g).

⁷ See section 352(c) of Title III of the USA PATRIOT Act of 2001, Pub. L. 107-56, 115 Stat. 272, 322 (2001) (codified at 31 U.S.C. 5318(h)).

⁸ 31 CFR 1023.320.

⁹ Crowdfunding is the use of the Internet to raise money through small contributions from a large number of investors. Not all crowdfunding involves the offering or selling of securities, though in some instances it does. This NPRM is meant to address

register the securities with the Securities and Exchange Commission (“SEC” or “Commission”) or state securities regulators.¹⁰ Crowdfunding is a new and evolving method to raise money using the Internet by seeking small individual contributions from a large number of people. The crowdfunding provisions of the JOBS Act were designed to help startups and small businesses raise funds by making relatively low-dollar offerings of securities less costly. They also permit Internet-based platforms known as “funding portals,” acting as intermediaries, to facilitate the offer or sale of securities without having to register with the SEC as brokers.

Title III of the JOBS Act amends the Securities Act of 1933 and the Securities Exchange Act of 1934 to create a new exemption for offerings of crowdfunded securities.¹¹ Specifically, the JOBS Act amends section 4 of the Securities Act of 1933 to exempt issuers from the registration requirements of section 5 of that Act when they offer and sell up to \$1 million in securities, provided that, among other things, individual investments do not exceed certain thresholds (e.g., \$2,000 to \$100,000 in a 12-month period) based on the investor’s annual income or net worth. Additionally, issuers must use the services of an intermediary that is either a broker registered with the SEC or a “funding portal” registered with the SEC.¹²

The JOBS Act also amends the Securities Exchange Act of 1934 to include a definition of funding portals in section 3(a)(80).¹³ The JOBS Act defines a funding portal as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(a)(6) of the Securities Act that does not: (i) Offer investment advice or recommendations; (ii) solicit purchases, sales, or offers to buy securities offered or displayed on its Web site or portal; (iii) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its

only instances in which crowdfunding involves facilitating an offer or sale of securities to raise money for a business pursuant to section 4(a)(6) of the Securities Act. For example, this NPRM is not addressing instances where crowdfunding is utilized to solicit donations from the general public or a targeted group.

¹⁰ Public Law 112-106, 126 Stat. 306 (2012).

¹¹ *Id.* See also sections 4(a)(6) and 4A of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and section 3(a)(80) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

¹² *Id.*

¹³ See section 3(a)(80) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

¹ The BSA is codified at 12 U.S.C. 1829b and 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. See 31 CFR 1010.100(e).

² 31 U.S.C. 5311.

³ 31 U.S.C. 5318.

Web site or portal; (iv) hold, manage, possess, or otherwise handle investor funds or securities; or (v) engage in such other activities as the SEC, by rule, determines appropriate.¹⁴

In addition, the JOBS Act adds new section 3(h) to the Securities Exchange Act of 1934, which requires the SEC to exempt, by rule, conditionally or unconditionally, a registered funding portal from the requirement to register with the SEC as a broker.¹⁵ The funding portal would, however, remain subject to the SEC's examination, enforcement, and rulemaking authority. The funding portal also must become a member of a national securities association that is registered under section 15A of the Securities Exchange Act.¹⁶ As required by the JOBS Act, the SEC issued a notice of proposed rulemaking ("Crowdfunding NPRM") on November 5, 2013 proposing the regulatory framework for intermediaries facilitating the offer or sales of crowdfunded securities,¹⁷ which it finalized largely as proposed on October 30, 2015.¹⁸

Current BSA regulations at Part 1023 of Chapter X of Title 31 of the CFR (the Part that imposes the specific requirements to maintain an anti-money laundering program and to file suspicious activity reports) define "broker-dealers" by reference to persons "registered, or required to be registered, as a broker or dealer with the Commission under the Securities Exchange Act of 1934."¹⁹ As described above, a registered funding portal would not be a person required to be registered as a broker with the Commission because a funding portal would be exempt from broker registration, and thus would not be subject to BSA regulations under the current BSA definition of "broker-dealers." In its Crowdfunding NPRM, the SEC sought to address this issue through its proposed rule 403(b). Specifically, the SEC proposed that "[n]otwithstanding [the exemption from registration as a broker or dealer in securities], for purposes of 31 CFR chapter X, a funding portal is 'required to be registered' as a broker or dealer with the Commission under the Exchange Act."²⁰ At the final stage of its Crowdfunding rulemaking, the SEC

determined "that it would be more appropriate to work with other regulators to develop consistent and effective AML obligations for funding portals," and chose not to adopt proposed rule 403(b).²¹ Now that the SEC has finalized its Crowdfunding rule exempting funding portals from having to register as brokers or dealers in securities, FinCEN is proposing this rulemaking to ensure that registered funding portals are subject to BSA regulations.

There are good reasons to ensure that funding portals are subject to BSA regulations. As the SEC has recognized, funding portals would continue to function as brokers regardless of the statutory provisions exempting them from registering as brokers under the Exchange Act.²² Specifically, although the JOBS Act prohibits a funding portal from holding, managing, possessing, or handling customer funds or securities, a funding portal's business activity is essentially similar to that of introducing brokers, which typically do not accept cash from customers or maintain custody of customer securities,²³ but yet are subject to the BSA regulations. As such, funding portals raise at least the same degree of AML and counter financing of terrorism risk as some other broker-dealers registered with the SEC, and should be regulated commensurately under the BSA.

Moreover, as the SEC noted in its November 5, 2013 Crowdfunding NPRM, there is reason to "expect that funding portals would often facilitate offerings of microcap or low-priced securities, which may be more susceptible to fraud and market manipulation. We believe that imposing the monitoring and reporting requirements of the BSA on funding portals would establish a valuable oversight, prevention and detection mechanism."²⁴ In a 2010 published report, the Financial Action Task Force also identified low-priced and privately-placed securities as potential vehicles for laundering money.

These securities pose a money laundering risk because they are often used to generate illicit assets through market manipulation, insider trading, and fraud.²⁵ In addition, unlawfully

acquired assets can be used to purchase these securities in order to resell them and create the appearance of legitimately sourced funds.²⁶ It is also possible that issuers relying on the exemption in section 4(a)(6) may be shell companies, which have been associated with a high risk of money laundering.²⁷ Congress recognized and expressed concern about these money laundering and financial crimes risks, which is why, in part, it chose to require that securities offered and sold in reliance on section 4(a)(6) be sold through a regulated intermediary.²⁸

FinCEN believes that funding portals could play a critical role in detecting, preventing, and reporting money laundering and other illicit financing, such as market manipulation and fraud. As described above, funding portals should be subject to normal BSA obligations. A funding portal, like an introducing broker, is in the best position to know its customers, and to identify and monitor for suspicious and potentially illicit activity at the individual customer level, as compared to other required participants in the transaction such as the qualified third

either use existing shares that are already publicly traded or start a shell company for the express purpose of engaging in those illicit activities. In addition, criminal organizations also have been known to use illicit assets generated outside the securities industry to engage in market manipulation and fraud."

²⁶ See 78 FR 66428, 66490–66491 (Nov. 5, 2013). "Moreover, criminal organizations can also initially invest in a private company that they can then use as a front company for commingling illicit and legitimate assets. They can then take this company public through an offering in the public securities markets, thus creating what appear to be legitimate offering revenues. Alternatively, criminal organizations can acquire a publicly traded company and use it to launder illicit assets." The FATF Typology further highlighted the risk of shell companies that, for example, "can be established to accept payments from criminal organizations for non-existent services. These payments, which appear legitimate, can be deposited into depository or brokerage accounts and either wire transferred out of a jurisdiction or used to purchase securities products that are easily transferable or redeemable."

²⁷ See 78 FR 66428, 66490–66491 (Nov. 5, 2013). See also, e.g., Joint Release, Guidance on Obtaining and Retaining Beneficial Ownership Information, FIN-2010-G001 (Mar. 5, 2010) (noting that criminals, money launderers, tax evaders, and terrorists may exploit the privacy and confidentiality surrounding some business entities, including shell companies and other vehicles designed to conceal the nature and purpose of illicit transactions and the identities of the persons associated with them); Financial Crimes Enforcement Network, The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies (Nov. 2006), available at http://www.fincen.gov/news_room/rp/files/LLCAssessment_FINAL.pdf.

²⁸ See 78 FR 66428, 66490–66491 (Nov. 5, 2013). See also 158 Cong. Rec. S1781 (daily ed. Mar. 19, 2012) (statement of former Sen. Carl Levin) ("Senior citizens, state securities regulators, and others worry that this will give rise to money laundering and fraud risks.").

¹⁴ *Id.*

¹⁵ *Id.* Generally, a third party that operates a Web site to effect the purchase and sale of securities for the account of others generally would, under existing regulations, be required to register with the Commission as a broker-dealer and comply with the laws and regulations applicable to broker-dealers.

¹⁶ *Id.*

¹⁷ See 78 FR 66428 (Nov. 5, 2013).

¹⁸ See 80 FR 71387 (Nov. 16, 2015).

¹⁹ 31 CFR 1023.100.

²⁰ See 78 FR 66428, 66484 (Nov. 5, 2013).

²¹ See 80 FR 71387, 71471 (Nov. 16, 2015).

²² See 78 FR 66428, 66483–66484.

²³ See *infra* note 20.

²⁴ See 78 FR 66428, 66490–66491 (Nov. 5, 2013).

²⁵ *Id.* See also Financial Action Task Force ("FATF"), Money Laundering and Terrorist Financing in the Securities Sector 20–21 (Oct. 2009) ("FATF Typology") (discussing the money laundering risks associated with low priced securities, private issuers, and shell companies). As explained in the FATF Typology, illicit actors "can

party, which may not see such activity given its less direct contact with individual customers.²⁹ FinCEN understands that the JOBS Act was designed to provide regulatory relief and ease the funding gap that startups and small businesses often face, while providing significant investor protections. But in addition to investor protections, any regulatory structure for securities-based crowdfunding through the Internet must also address the risk of money laundering and other financial crimes presented by the misuse of crowdfunding transactions. FinCEN agrees with the SEC that a funding portal engaging in the business of effecting securities transactions for the accounts of others through crowdfunding is acting as a broker-dealer, despite the exemption from registration under the Exchange Act that Congress directed the SEC to implement, and that this new type of broker or dealer in securities should be subject to supervision under the BSA regulation.

For all of these reasons, in addition to the provisions finalized in the SEC's Crowdfunding rulemaking, FinCEN believes that it is further appropriate, in response to changes in the registration requirement in the JOBS Act, to amend the BSA definitions of a broker or dealer in securities and broker-dealer to explicitly include funding portals, registered or required to be registered as such, with the SEC. Explicitly requiring funding portals to comply with the BSA's requirements, consistent with registered brokers or dealers in securities, helps ensure consistent regulation of brokers or dealers in securities with fewer opportunities for regulatory gaps, which could be exploited by financial criminals. Because the BSA and its implementing rules are risk-based, we expect that funding portals would design programs commensurate with their limited business model and not the more comprehensive programs established by full service broker-dealers.

²⁹ See 78 FR 66428, 66490. See also, e.g., National Association Of Securities Dealers ("NASD") (n/k/a "FINRA"), NASD Provides Guidance To Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law, Special Notice to Members 02-21 (Apr. 2002), available <https://www.finra.org/Industry/Regulation/Notices/2002/p003703> (stating that "introducing brokers generally are in the best position to 'know the customer,' and thus to identify potential money laundering concerns at the account opening stage, including verification of the identity of the customer and deciding whether to open an account for a customer.").

B. Overview of the Current Regulatory Provisions Regarding Brokers or Dealers in Securities and Broker-Dealers

On October 26, 2001, the President signed into law the USA PATRIOT Act of 2001. Title III of the USA PATRIOT Act makes a number of amendments to the anti-money laundering provisions of the BSA to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. The statutory mandate that all financial institutions, which include brokers or dealers in securities, establish an AML program and comply with the BSA regulations is a key element in the nation's effort to detect and prevent money laundering and the financing of terrorism. If implemented, this proposal would explicitly incorporate a funding portal's activities within the existing definition of brokers or dealers in securities, and require funding portals to comply with the full range of requirements outlined in 31 CFR 1023 applicable to broker-dealers, including: (1) AML program; (2) Suspicious Activity Report; (3) Customer Identification Program; (4) Currency Transaction Report; (5) Recordkeeping and Travel rules; (6) Information Sharing (section 314); (7) Due Diligence for Correspondent Accounts for Foreign Financial Institutions and Private Banking Accounts; (8) Prohibition on Correspondent Accounts for Foreign Shell Banks; and (9) Special Measures (section 311).³⁰ The following are brief descriptions of the regulations that would apply to funding portals if this rulemaking is finalized as proposed.

1. Anti-Money Laundering Program

Section 352(a) of the USA PATRIOT Act amended section 5318(h) of the BSA. Section 5318(h)(1) requires every financial institution defined in 31 U.S.C. 5312(a)(2), which are also covered in 31 CFR, to establish an AML program that includes, at minimum, (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.³¹ The BSA defines the term "financial institution" to include, in part, "a broker or dealer in securities."³² Currently, a broker or dealer in securities that implements and maintains an AML program that complies with the rules, regulations, or

³⁰ See 31 CFR 1023.210, 1023.220, 1023.310, 1023.320, 1023.410, 1023.520, 1023.610, and 1023.630.

³¹ 31 U.S.C. 5318(h)(1)(A–D).

³² 31 U.S.C. 5312(a)(2)(G).

requirements of its self-regulatory organization ("SRO") is deemed to satisfy the requirement of section 5318 (h)(1) of the BSA.³³

2. Suspicious Activity Report

FinCEN has promulgated Suspicious Activity Report ("SAR") regulations for a number of financial institutions. These include banks, casinos, money services businesses, brokers or dealers in securities, mutual funds, insurance companies, and futures commission merchants and introducing brokers in commodities.³⁴ 31 CFR 1023.320 contains the rules setting forth the obligation of broker-dealers in securities to report suspicious transactions. Specifically, brokers or dealers in securities are required to report a transaction that is conducted or attempted by, at, or through a broker-dealer and involves or aggregates to at least \$5,000 in funds or other assets, and the broker-dealer knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part) (i) involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the broker or dealer in securities knows of no reasonable explanation for the transaction after examining the available facts; or (iv) involves the use of the broker-dealer to facilitate criminal activity.

3. Currency Transaction Report

The Secretary was granted authority in 1970, with the enactment of 31 U.S.C. 5313, to require financial institutions to report currency transactions exceeding \$10,000. The information collected on the Currency Transaction Report is required to be provided pursuant to 31 U.S.C. 5313. The implementing regulation for brokers or dealers in securities can be found at 31 CFR 1023.310.

³³ 31 CFR 1023.210. See also Notice of Proposed Rulemaking—Customer Due Diligence Requirements for Financial Institutions 79 FR 45151 (Aug. 4, 2014). Treasury proposed rules to clarify and strengthen customer due diligence requirements, to include a new requirement to identify beneficial owners of legal entity customers. The proposed changes in that notice of proposed rulemaking may have an impact on what is proposed in this notice.

³⁴ See 31 CFR 1020.210, 1020.320, 1021.210, 1021.320, 1022.210, 1022.320, 1023.210, 1023.320, 1024.210, 1024.320, 1025.210, 1025.320, 1026.210, and 1026.320, respectively.

4. Records To Be Made and Retained by Financial Institutions

On January 3, 1995, FinCEN and the Board of Governors of the Federal Reserve System (“the Board”) jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds (the “recordkeeping rule”).³⁵ At the same time, FinCEN issued the “travel rule,” which requires banks and nonbank financial institutions to include with a transmittal order certain information on funds transfers and transmittals of funds sent to other banks or nonbank financial institutions.³⁶

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions, and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

In general, the recordkeeping rule requires financial institutions to retain certain information on transmittals of funds of \$3,000 or more, which must be retrievable and available upon request to FinCEN, to law enforcement, and to regulators to whom FinCEN has delegated the BSA compliance examination authority. Under the travel rule, a financial institution acting as the transmitter’s financial institution must obtain and include in the transmittal order certain information on transmittals of funds of \$3,000 or more.

5. Customer Identification Program

31 CFR 1023.220 sets forth the customer identification program (“CIP”) requirements for brokers or dealers in securities, which would include funding portals with the proposed amendments. Under the rule published jointly with the SEC,³⁷ brokers or dealers in securities must establish a written CIP that, at a minimum, includes procedures for: (1) Obtaining customer identifying information from each customer prior to account opening; (2) verifying the identity of each customer to the extent reasonable and

practicable, within a reasonable time before or after account opening; (3) making and maintaining a record of obtained information relating to identity verification; (4) determining, within a reasonable time after account opening or earlier, whether a customer appears on any list of known or suspected terrorist organizations designated by Treasury; and (5) providing each customer with adequate notice, prior to opening an account, that information is being requested to verify the customer’s identity.³⁸ Under certain defined circumstances, brokers or dealers in securities may rely on the performance of another financial institution that also is subject to an AML compliance program rule to fulfill some or all of the requirements of the broker-dealer’s CIP.³⁹

6. Special Information Procedures To Deter Money Laundering and Terrorist Activity

31 CFR 1023.500 states generally that brokers or dealers in securities are covered by the special information procedures to detect money laundering and terrorist activity requirements.⁴⁰ Sections 1010.520 and 1010.540 implement sections 314(a) and 314(b) of the USA PATRIOT Act, respectively.

Under the section 314(a) requirements, brokers or dealers in securities must respond to requests for information made by FinCEN on behalf of Federal, state, and local law enforcement agencies, or a similar request from FinCEN on its own behalf, on behalf of certain components of Treasury, or on behalf of certain foreign law enforcement agencies.⁴¹ Upon receiving such a request, a broker or dealer in securities is required to search its records to determine whether it has accounts for, or has engaged in transactions with, any specified individual, entity, or organization.⁴² Under the regulation implementing section 314(b), brokers or dealers in securities are authorized to share information with one another, under a safe harbor that offers protections from liability, in order to better identify and report potential money laundering or terrorist activities.⁴³

7. Due Diligence Anti-Money Laundering Programs for Private Banking and Certain Foreign Accounts

31 CFR 1023.600 generally states that brokers or dealers in securities are subject to the special standards of diligence, prohibitions, and special measures requirements.⁴⁴ Sections 1010.610, 1010.620, and 1010.630 implement section 312 of the USA PATRIOT Act and generally apply to any financial institution listed in 31 U.S.C. 5312(a)(2). Sections 1023.610 and 1023.620 require U.S. financial institutions, including brokers or dealers in securities, to establish risk-based due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons.

8. Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process

Section 313 of the USA PATRIOT Act amended the BSA by adding subsection (j) to 31 U.S.C. 5318. Sections 1010.630 and 1023.630 implement this provision and set forth the requirements for brokers and dealers in securities. The regulations prohibit covered financial institutions from providing correspondent accounts in the United States to foreign shell banks (*i.e.*, banks without a physical presence in any country) and to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services to foreign shell banks indirectly.⁴⁵ The statutory and regulatory definitions of covered financial institutions include a broker or dealer in securities.⁴⁶ Brokers and dealers in securities must comply with this regulation with respect to any account they provide in the United States to a foreign bank that permits the foreign bank to engage in securities transactions, funds transfers, or other financial transactions through that account.

Section 319(b) of the USA PATRIOT Act amended the BSA by adding subsection (k) to 31 U.S.C. 5318, which requires any covered financial institution that provides a

³⁵ 31 CFR 1020.410(a) (recordkeeping requirements for banks); 31 CFR 1010.410(e) (recordkeeping requirements for nonbank financial institutions). The Board revised its Regulation S (12 CFR part 219) to incorporate by reference the recordkeeping rule codified in Title 31 of the CFR, as well as to impose a five-year record-retention requirement with respect to the recordkeeping requirements.

³⁶ 31 CFR 1010.410(f).

³⁷ 68 FR 25113 (May 9, 2003).

³⁸ 31 CFR 1023.220(a)(6).

³⁹ *Id.*

⁴⁰ These requirements are set forth and cross referenced in sections 1023.520 (cross referencing to 31 CFR 1010.520) and 1023.540 of 31 CFR (cross-referencing to 31 CFR 1010.540).

⁴¹ 31 CFR 1010.520(b).

⁴² 31 CFR 1010.520(b)(3).

⁴³ 31 CFR 1023.540.

⁴⁴ These requirements are set forth and cross referenced in sections 1023.610 (cross referencing to 31 CFR 1010.610), 1023.620 (cross-referencing to 31 CFR 1010.620), and 1023.630 of 31 CFR (cross-referencing to 31 CFR 1010.630).

⁴⁵ See 31 CFR 1010.630.

⁴⁶ See 31 U.S.C. 5318(j)(1) and 5312(a)(2).

correspondent account to a foreign bank to maintain records of the foreign bank's owners and any agent in the United States designated to accept service of legal process for records regarding the correspondent account. While the rule does not prescribe the manner in which a covered financial institution must obtain the required information, it does provide a safe harbor if a covered financial institution obtains from the foreign bank the model certification provided on FinCEN's public Web site.⁴⁷ The rule requires covered financial institutions to verify the information previously provided by each foreign bank for which it maintains a correspondent account at least once every two years.

9. Special Measures Under Section 311 of the USA PATRIOT Act

Section 311 of the USA PATRIOT Act ("section 311") added section 5318A to the BSA, granting FinCEN the authority to require domestic financial institutions and financial agencies to take certain "special measures" upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of "primary money laundering concern." To address the specific money laundering risks, section 311 provides a range of special measures that can be imposed individually, jointly, in any combination, and in any sequence.⁴⁸

Under 31 CFR 1010.810(a), "[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter, is delegated [by the Secretary] to the Director, FinCEN." In turn, Federal functional regulators have been delegated authority to examine certain financial institutions they oversee for

compliance with FinCEN's regulations. FinCEN has delegated to the SEC the authority to examine brokers or dealers in securities, which would include funding portals, for compliance with FinCEN regulations.⁴⁹

III. Section-by-Section Analysis

This NPRM proposes to revise the regulations implementing the BSA by amending the definition of "broker or dealer in securities" and its synonymous term "broker-dealer" to specifically include funding portals that are involved in the offering or selling of crowdfunding securities pursuant to section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)). These terms are defined in three different places, and phrased slightly differently for each, but are substantively the same:

- In 31 CFR 1010.100(h), a "broker or dealer in securities" is defined as "[a] broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934."

- 31 CFR 1010.605(e)(1)(viii) and (e)(2)(viii) refer to "[a] broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934."

- In 31 CFR 1023.100(b), a "broker-dealer" is defined to mean "a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 77a *et seq.*), except persons who register pursuant to 15 U.S.C. 78o(b)(11)."⁵⁰

FinCEN proposes to amend these definitions by adding to each the phrase "a person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6))."

FinCEN further proposes to make technical amendments to each definition to create one standard definition of the terms "broker or dealer in securities" and "broker-dealer" to be used throughout the regulations.

IV. Request for Comment

FinCEN invites comment on any and all aspects of the NPRM, and

⁴⁹ 31 CFR 1010.810(b)(6).

⁵⁰ FinCEN is also amending this section of the rule to reflect the correct citation of 15 U.S.C. 78a *et seq.* currently published as 15 U.S.C. 77a *et seq.*

specifically seeks comments on the following questions:

- Is the application of all BSA regulations currently covering brokers or dealers in securities to funding portals appropriate?
- Are there exceptions to the regulations that should be granted to funding portals? If so, why would any such exceptions be appropriate?

V. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this proposed rule is a significant regulatory action, although not economically significant, for purposes of Executive Orders 12866 and 13563.

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Since there is no change to the requirements imposed under existing regulations, FinCEN has determined that it is not required to prepare a written statement under section 202.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic

⁴⁷ Certification Regarding Correspondent Accounts for Foreign Banks, available at: <http://www.fincen.gov/forms/files/Certification%20Regarding%20Correspondent%20Accounts%20for%20Foreign%20Banks.pdf>; Certification Regarding Correspondent Accounts for Foreign Banks, available at: <http://www.fincen.gov/forms/files/Recertification%20Regarding%20Correspondent%20Accounts%20for%20Foreign%20Banks.pdf>.

⁴⁸ Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing special measures against Nauru).

impact on a substantial number of small entities (5 U.S.C. 605(b)).

Section 601(3) of the RFA states that the term “small business” has the same meaning as the term “small business concern” under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate for the activities of the agency and publishes such definition(s) in the **Federal Register**. The Small Business Administration’s (“SBA”) defines a broker dealer industry to be a small entity as having “annual receipts” of \$38.5 million.⁵¹ However, FinCEN is concerned that using the SBA size standard rather than the SEC size standard may result in confusion. Accordingly, FinCEN consulted with the SBA’s Office of Advocacy. After consultation, FinCEN is proposing to define the term small entity in accordance with definitions obtained from SEC rules implementing the Securities Exchange Act,⁵² in lieu of using the Small Business Administration’s definition.⁵³ The SEC defines an entity as a small broker or dealer, for purposes of the RFA, if it: (1) Had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release. The proposed rules would define broker or dealer in securities as: (1) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or (2) a person, registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)). Based on FOCUS Report data, the SEC estimated

that there are 871 broker-dealers that are classified as “small” entities for purposes of the RFA.⁵⁴ The SEC applied comparable criteria to funding portals that would register under the SEC’s Crowdfunding rule.

Relying on the SEC’s definition has the benefit of ensuring consistency in the categorization of small entities for SEC examiners, as well as providing the broker or dealer industry with a uniform standard. In addition, FinCEN’s proposed use of the SEC’s definition of small entity will have no material impact upon the application of these proposed rules to the broker or dealer industry. FinCEN requests comment on the appropriateness of using the SEC’s definition of small entity.

The proposed changes are intended to amend the regulatory definition of broker or dealer in securities to include funding portals in light of the JOBS Act and the Final SEC Crowdfunding Rules. While these amendments do not alter a broker or dealer in securities existing obligations, they will expand the BSA regulations to create obligations for funding portals. Accordingly, FinCEN has prepared an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the Need for, and Objectives of, the Proposed Regulation

The JOBS Act creates a comprehensive regulatory structure for startups and small businesses to raise capital through securities offerings using the Internet through crowdfunding. It also establishes the regulation of registered funding portals and brokers that are required to act as intermediaries in the offer and sale of crowd-funded securities. The JOBS Act amends the Federal securities laws to include certain funding portals, defined as any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others solely pursuant to section 4(a)(6) of the Securities Act, but that is exempted from the requirement to register as a broker-dealer with the SEC, and is instead required to be registered as a funding portal with the SEC. This proposed regulation is necessary to expand the scope of the regulatory definition of broker or dealer in

securities to incorporate funding portals, to ensure consistent applicability of the BSA regulations to all brokers in securities.

2. Small Entities Affected by the Proposed Regulation

While the proposed BSA requirements would impose burdens on funding portals, the proposed rules would not impose any burden on funding portals in addition to those already imposed on broker-dealers. Consequently, we do not discuss those burdens here, and we would not be requesting any separate approval from OMB to impose the burdens associated with the information collection requirements to comply with the requirements of 31 CFR 1023, including the BSA/AML program, CTR, SAR, CIP, Recordkeeping and travel rules, Due Diligence Programs for Correspondent Accounts for Foreign Financial Institutions and Private Bank accounts, Prohibition on Correspondent Account for Shell Banks, section 311, and section 314 requirements.

The requirements of this proposed regulation, which are consistent with the existing requirements for brokers or dealers in securities, would include funding portals regardless of size. Based on SEC analysis of the estimated 50 funding portals in the first year expected to register with the SEC, as a result of the JOBS Act and implementing regulations, 30 would be classified as “small” entities for purposes of the Regulatory Flexibility Act.⁵⁵

3. Compliance Requirements

Upon finalization of this proposal, registered funding portals would be required to comply with all of the requirements of the BSA, including the reporting, recordkeeping, and record retention requirements that apply to entities currently defined as brokers or dealers in securities. We recognize that the proposed rules would impose costs on funding portals to implement AML procedures, but we believe that the proposed amendments and requirements provide important benefits. As noted in the SEC NPRM, low-priced and privately-placed securities pose a money laundering risk because they are susceptible to market manipulation and fraud.⁵⁶ Requiring funding portals to comply with BSA regulations, in particular the requirement to file SARs, helps identify potentially fraudulent activity for law enforcement and regulators. These AML

⁵¹ *Id.*

⁵² 17 CFR 240.0–10c.

⁵³ 13 CFR 121.201.

⁵⁴ FOCUS Reports, or “Financial and Operational Combined Uniform Single” Reports, are monthly, quarterly, and annual reports that broker-dealer generally are required to file with the SEC and or self-regulatory organizations pursuant to Exchange Act Rule 17a–5 (17 CFR 240.17a–5).

⁵⁵ See 80 FR 71387, 71533 (Nov. 16, 2015).

⁵⁶ See 78 FR 66428, 66490–66491 (Nov. 5, 2013).

requirements would therefore help to protect market participants from illegal activity that could potentially infiltrate new online investment opportunities. Requiring the implementation of AML procedures in turn provides potential investors with some degree of confidence that adequate protections against illegal activity exist for this new fundraising approach and could encourage more investors to participate, thus facilitating capital formation.

The proposed regulations would require funding portals to develop programs reasonably designed to comply with the BSA and to collect and keep certain information, as well as report suspicious activity, among other reports. While the proposed regulations would not change the scope of compliance with the BSA requirements for brokers or dealers in securities that are not funding portals, the reporting, recordkeeping, and other compliance requirements of the proposed regulation would impact small entities that decide to register as funding portals. While the majority of these requirements would be performed by the funding portal's internal compliance personnel, some funding portals may choose to hire outside counsel and third-party service providers to assist in meeting the compliance requirements.

4. Duplicative, Overlapping, or Conflicting Federal Rules

FinCEN believes that there are no Federal rules that duplicate, overlap, or conflict with the proposed regulations or the proposed amendments.

5. Significant Alternatives to the Proposed Regulations

FinCEN considered whether it would be appropriate to establish different compliance or reporting obligations for small funding portals in the proposal, or whether small funding portals should be exempt from any parts of the proposed rules or even from the rules in their entirety. While the proposed rules are based on existing compliance requirements applicable to registered brokers or dealers in securities, FinCEN believes that it would not be necessary, nor would it be advisable, to establish different requirements for small funding portals that engage in crowdfunding. Eliminating or issuing different requirements for smaller funding portals would not be the most effective means of addressing the money laundering risk associated with securities crowdfunding as it would create a loophole and a path of least resistance that money launderers could exploit. The number of small funding portals that would be affected by the proposed rules would be

limited. According to the SEC, an industry survey of crowdfunding platforms reported that 191 platforms were estimated to be operating in the United States as of 2012.⁵⁷ Based on 135 participants in the survey both in the United States and international jurisdictions, 15% of funding portal platforms were engaged in securities-based crowdfunding.⁵⁸ Although the number of intermediaries that may ultimately register as funding portal is uncertain, it is likely that three to four of the crowdfunding platforms that have the majority of market share in reward-based and donation-based crowdfunding would most likely obtain the majority of market share in the securities-based crowdfunding market based on section 4(a)(6).⁵⁹ The BSA regulations are risk-based and are designed so that entities that are subject to the regulations can implement a program that is commensurate with the risks posed by their particular business. FinCEN expects that a small funding portal would implement a risk-based compliance program that takes into account the limited business activities in which the business participates. For example, a funding portal could implement a risk-based compliance program which reflects the fact that the business does not accept cash or securities from its customers. Therefore, we believe that the proposed rules are appropriate, and properly cover all brokers or dealers in securities, including funding portals. Furthermore, FinCEN believes that having different requirements for funding portals could undermine the objectives of the proposed requirements.

FinCEN welcomes comment on any significant alternatives that would minimize the impact of the proposal on small funding portal entities.

VIII. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget ("OMB") under section 3507 of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3507(d)). (OMB Control Number 1506-0004 for the CTR requirement, the OMB Control Number for the CTR report itself is 1506-0064, OMB Control Number 1506-0019 for the SAR regulatory requirement, the OMB Control Number for the BSA SAR report itself is 1506-0065, OMB Control Number 1506-0034 for the CIP

requirement, OMB Control Number 1506-0043 for the Prohibitions on Correspondent Accounts for Foreign Shell Banks requirement, OMB Control Number 1506-0049 for the section 314 requirement, and OMB Control Number 1506-0053 for the Recordkeeping and travel rules requirements). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Certain provisions of the proposed rules contain "collection of information" requirements within the meaning of the PRA. This proposal intends to expand the scope of financial institutions subject to the BSA regulations FinCEN issued for brokers or dealers in securities to include funding portals. The collections of information included under OMB Control Number 1506-0004 for the CTR requirement, OMB Control Number 1506-0019 for the SAR requirement, OMB Control Number 1506-0034 for the CIP requirement, OMB Control Number 1506-0043 for the Prohibitions on Correspondent Accounts for Shell Banks requirement, OMB Control Number 1506-0049 for the section 314 requirement, and OMB Control Number 1506-0053 for the Recordkeeping and travel rules requirements, respectively would be amended to reflect related burdens under the proposed rules.

1. Description of Affected Financial Institutions

Funding portals registered or required to be registered with the SEC.

2. Estimated Number of Affected Financial Institutions

According to the SEC, as of 2014, there are approximately 200 U.S.-based crowdfunding portals in existence. Approximately 15% of these crowdfunding portals would participate in securities-based crowdfunding. The SEC estimates that the number of crowdfunding portals would grow at 60% per year over the next three years and that approximately 50 entities would register as funding portals annually.⁶⁰

For purposes of this analysis it should be noted that the actual number of funding portals that would participate in securities-based crowdfunding transactions is uncertain, as the rules governing securities-based crowdfunding transactions through funding portals have only recently been passed. Based on registration information currently available, the SEC estimates that approximately 10

⁵⁷ See 78 FR 66428, 66516 (Nov. 5, 2013).

⁵⁸ The survey further indicated that 11% were engaged in lending-based crowdfunding, 27% in donation-based crowdfunding, and 47% in reward-based crowdfunding.

⁵⁹ See 78 FR 66428, 66516 (Nov. 5, 2013).

⁶⁰ See 80 FR 71387, 71523 (Nov. 16, 2015).

intermediaries that are currently registered with the SEC may choose to register as brokers to act as intermediaries for transactions made in reliance on section 4(a)(6). In addition, approximately 50 intermediaries per year that are registered as brokers with the SEC would choose to add to their service offerings by also becoming crowdfunding intermediaries or funding portals.

3. Estimated Average Annual Burden Hours Per Affected Financial Institutions, Estimated Total Annual Burden

As this is a new requirement, the estimated average burden associated with the recordkeeping requirement in this proposed rule is three hours for development of a written program. A one hour per year burden is recognized for annual maintenance and update. FinCEN believes funding portals would establish policies and procedures to achieve compliance with the BSA requirements at the same time as it is establishing policies and procedures to comply with the JOBS Act. This would reduce the overall burden on funding portals as all issues concerning the establishment of policies and procedures could be addressed simultaneously. Nevertheless, the proposed rules would not impose any additional burden on funding portals to those currently imposed on brokers or dealers. Therefore, the burden on funding portals would be the same as the existing burden for broker-dealers, and would be included within those estimates FinCEN provided to OMB for brokers or dealers.

List of Subjects in 31 CFR Parts 1010 and 1023

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 1010 and 1023 of Chapter X of title 31 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, section 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Amend § 1010.100 by revising paragraph (h) to read as follows:

§ 1010.100 General definitions.

* * * * *

(h) Broker or dealer in securities. A broker or dealer in securities means:

(1) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(2) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6));

* * * * *

■ 3. Amend § 1010.605 by revising paragraphs (e)(1)(viii) and (e)(2)(viii) to read as follows:

§ 1010.605 Definitions.

* * * * *

(e) * * *

(1) * * *

(viii) A broker or dealer in securities means:

(A) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(B) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6));

* * * * *

(2) * * *

(viii) A broker or dealer in securities means:

(A) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(B) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)).

* * * * *

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

■ 4. The authority citation for part 1023 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, section 314, Pub. L. 107–56, 115 Stat. 307.

■ 5. Amend § 1023.100 by revising paragraph (b) to read as follows:

§ 1023.100 Definitions.

* * * * *

(b) Broker or dealer in securities or broker-dealer means:

(1) A person registered, or required to be registered, as a broker or dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)); or

(2) A person registered, or required to be registered, as a funding portal with the Securities and Exchange Commission under section 4(a)(6) of the Securities Act of 1933 (15 U.S.C. 77d(a)(6)).

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–1057]

RIN 1625–AA09

Drawbridge Operation Regulation; Norwalk River, Norwalk, CT

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Metro-North WALK Bridge across the Norwalk River, mile 0.1, at Norwalk, Connecticut. The bridge owner submitted a request to require a greater advance notice for bridge openings and to increase time periods the bridge remains in the closed position during the weekday morning and evening rush hours. It is expected that this change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.