LIVE OUT LOUD, INC.

[redacted]

January 31, 2022

Via rule-comments@sec.gov
Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-13-20, Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders

Dear Ms. Countryman:

Live Out Loud, Inc. ("LOL") appreciates the opportunity to comment on this well thought out policy-based exemptive order allowing transaction-based compensation to be paid to finders with clear articulation of the activities that they may provide to private issuers without being required to be associated with a broker-dealer registered under Section 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act").

LOL is a longstanding coaching and seminar company providing a channel to educate the public about everyday wealth creation principles found in the books authored by acclaimed veteran writer, Loral Langemeier.[1] Langemeier is the founder and President of LOL.

LOL applauds the Commission for providing clarity in this Order, which is guidance to issuers, finders as well as the Commission staff, including the Division of Enforcement, that the receipt of transaction-based compensation by a finder is not per se indicative of the need for broker-dealer registration. Such guidance is particularly insightful for LOL which may

[1] Langemeier's next book titled "Make Your Kids Millionaires" is scheduled to be published later this year.

receive marketing compensation in various forms from its seminar educational speakers to defray seminar hosting costs.

LOL applauds the Commission for expressing its views on the important role of finders in capital raising in private placements, which role is critically necessary for small, non-public companies in their growth phase. LOL supports the Commission's selection of the broad array of permissible finders' activities reflected in the Tier 1 and Tier 2 approaches and the Order's clear articulation that finders may receive transaction-based compensation in connection with performing these activities. The Order is tantamount to Commission rulemaking and, if promulgated, would ameliorate the pervasive chilling effect of the Commission's enforcement staff legacy of castigating issuers and finders that receipt of transaction-based compensation triggers broker-dealer registration.[2] We have read the comments letters filed to date on this important Order, and find several exceptionally noteworthy.

With respect to the crucial role of finders in capital formation and the importance of issuers having the flexibility to pay finders transaction-based compensation, we find the following letters compelling.

David E. Case is an attorney who represents venture capital backed startups, early stage companies and venture backed investment funds, commented:

> Finders play an important role in facilitating capital formation for smaller issuers. More often than not, a finder is a former entrepreneur, attorney, or venture capitalist that is able to bring together accredited investors and promising companies seeking capital by virtue of the human network maintained by such finder. By providing limited exemptions to finders as proposed in the current Order, the market for raising funds will become significantly more democratized and considerably more open and transparent.

See comments on File No. S7-13-20 by David E. Case, affiliated with Asia Pacific Advisory, R. Burton, dated October 8, 2020.

The Heritage Foundation, a non-profit Washington, DC-based think tank that conducts public policy research and analysis based on free enterprise commented:

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[2] Gibson Dunn's comment letter on the proposed Order states:

> We write to raise our concern that a number of recent SEC enforcement actions that are now being litigated are directly contrary to the Commission's stated goals in the Proposed Order and, in fact, will likely diminish any benefits that small businesses would receive if the Proposed Order were promulgated. We believe that it is important for the Commission to consider the likely diminished benefits from the Proposed Order as a result of these SEC enforcement actions when assessing the potential costs and benefits of the proposed exemption—and to take corrective action by bringing those misguided enforcement actions to an end.

See comments on File No. S7-13-20 by Helgi C. Walker and Barry Goldsmith, Gibson, Dunn & Crutcher LLP, dated October 19, 2020.

> For years, the SEC staff appeared to believe that structuring compensation so that it is transaction-based will almost always result in the necessity of registration in the absence of some other specific statutory exemption (for example, those for banks in section 3 of the Securities Exchange Act). This is both an incorrect reading of the law and bad public policy. There is absolutely no mention in the statutory definition of a broker or a dealer of the type of compensation involved. The primary focus of the law is whether the person is "engaged in the business" of "effecting transactions in securities" for the account of others. Ergo, the focus on transaction-based compensation is an unwarranted regulatory creation of the SEC.

See comments on File No. S7-13-20 by David R. Burton, Senior Fellow in Economic Policy, The Heritage Foundation, dated November 12, 2020.

> SEC staff analysis appears to center on concerns about "conflict of interest." But in the context of small businesses trying to raise capital, success-based compensation usually creates a commonality of interest between the finder or private placement broker and his or her principal rather than a conflict of interest. With success fee compensation, the finder has the same interest as the small business principal -- finding capital. With other forms of compensation, the finder or private placement broker simply has an interest in getting paid (whether or not he or she actually performed a service of value to the paying business).

Id.

Katten Muchin Rosenman LLP, a prominent national law firm known for its corporate finance and securities regulatory practice, commented:

> This proposal would also facilitate the Commission's goal of supporting issuers owned by women and other diverse entrepreneurs. Diverse founders are more likely to employ and utilize diverse Employee Tier II Finders who would benefit from the transaction-based compensation allowance that the Proposed Order contemplates. Use of Employee Tier II Finders facilitates diversity and inclusion for both issuers and finders.

See comments on File No. S7-13-20 by Henry Bregstein, Richard D. Marshall and Zachary Denver, Katten New York office, dated November 12, 2020. Katten's comment letter added:

> Smaller issuers, early stage businesses, and those located in places that lack established, robust capital raising networks rely on finders to assist with capital formation. They often particularly rely on their own employees to assist with locating potential investors. The above suggested changes would facilitate the use of Employee Tier II Finders and would allow smaller issuers to potentially hire and retain more qualified employees, including women and other diverse employees, if the issuers are able to pay transaction-based compensation.

Id.

Finally, the comments of Kent Lucas, an unregistered advisor who acts as a finder and advises "private and public companies of all sizes," give pragmatic business support for the Commission's position in the Order that transaction-based compensation is both appropriate and necessary for finders:

> A flat fee for Finders is problematic for both the early stage company and the Finder. We as Finders must guess how much we will be able to raise for the company and Finders then have little incentive to raise a higher amount of capital under such a flat fee structure. For the company, they are at risk of "overpaying" if we fail to raise the desired amount. This misalignment has prevented many arrangements from taking place - hurting us, the small but sophisticated Finder, as well as the early stage company which struggles to access investors and capital. We face this negotiation challenge constantly and I know that this misalignment of compensation happens throughout the Finder and startup communities.
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> Transaction based compensation, for Finders that have passed some level of qualification and/or screening, with minimal burden of cost or time, is a necessity. In order to maintain our global lead in entrepreneurship, innovation and technology applications, smaller U.S. startup companies must have the same access to capital that larger firms have. This is even more relevant for smaller companies where cash, e.g. revenues are scarce and paying Finders based on their ability to bring in capital is more than logical.

See comments on File No. S7-13-20 by Kent Lucas, dated December 28, 2020.

LOL, after reading the comment letters, sees that an overwhelming number of commentators support extending the exemptive Order to entities as well as individuals. LOL supports extending the Order to entities so that it, as an entity owned by Ms. Langemeier, can partake of the finders exemption along with Ms. Langemeier as an individual.

With respect to disclosures regarding the existence of the finder and any compensation arrangement between the finder and the issuer, the issuer and its counsel and/or compliance staff should be responsible for disclosing to the subscriber/investor this information. As the finder is precluded from participating in drafting the issuer's private placement memoranda and subscription agreement, the issuer is solely responsible for disclosing all material terms and conditions of the offering, which should include the arrangements with the finder. In this regard, most finders will be ill equipped and not knowledgeable of how to properly disclose the nuances involved in an issuer-finder relationship, which is best left to the issuer and its securities counsel.

Finally, the Order as a codification of a first-time Commission articulated finders exemption should restrict the use of the exemption to certain "bad actors." However, the use of the "statutory disqualification" definition under Section 3(a)(39) of the Exchange Act is overbroad. This provision sweeps in some non-scienter based infractions, which may have been unwittingly triggered and consented to by one settling a past disciplinary matter.

For example, a violation of Section 5(a) of the Securities Act of 1933 and its state securities law equivalents involve selling an unregistered securities without availability of an exemption. These violations have no scienter requirement and a finder could have a record of such violation without having known the hyper-technical securities regulations governing such sales. A Section 5 violation and its state analogues give rise to a statutory disqualification. While this may be proper for keeping out those seeking to go into the business of being a registered broker-dealer or investment advisor, it should not preclude one from being a finder.

Accordingly, the proposed Order should give a "one-bite" exception for any non-scienter-based statutory disqualification. However, those who are subject to scienter-based statutory disqualifications, which include infractions involving securities anti-fraud rules, should be precluded from availing themselves from the exemption.

SUMMARY REMARKS

LOL looks forward to the Commission completing this Exemptive Order proceeding and adopting this very necessary declarative exemptive policy regarding finders. The Exemptive Order will encourage capital formation, consistent with investor protection.

We thank the Commission for considering our comments and would be pleased to discuss them further if the opportunity so arises.

Sincerely,

Loral Langemeier, President

CC: Chairman Gary Gensler
Commissioner Hester Peirce
Commissioner Allison Herren Lee
Commissioner Caroline A. Crenshaw