Subject: Comment on Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a)
From: Bob Hamman
Affiliation:

Nov. 10, 2020

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November 11, 2020
Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Re: 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:
First Asset Financial Inc. is a small broker dealer that is writing today to express our opposition to the proposed exemptive order for "Finders" issued by the Securities and Exchange Commission (SEC) on October 7, 2020. We believe the proposed order radically reduces investor protections currently afforded customers by regulated persons and entities. This proposal will create and sanction a loophole that will produce an unregistered class of individuals permitted to solicit unsuspecting retail investors to invest in complicated investment banking deals. We further believe there is a lack of sufficient and conclusive analysis to support this proposed order and that the risk of fraud for Main Street retail investors is so overwhelming that this proposed order should be withdrawn immediately and permanently.
There are many elements lost in this proposal that currently protect investors. One of the most important elements lost is the "due diligence" performed by a third party. In the normal course of business, broker dealers perform (& are required to do so) due diligence on their product offerings. Obviously, this process is performed to attempt to offer product to their investors that is likely to be successful. This will result in a favorable experience for investors (always what investors are looking for) and it lessens the likelihood of a law suit or arbitration against the offering firm. It appears that due diligence is missing in the "Tier 1" finder in that this finder is a "direct agent" of the issuer. Can either this (likely) enthusiastic Tier 1 person or the issuer represent the negative aspects of the investment (i.e., a balanced presentation) or present an objective presentation of the facts to the prospect? Likely not. Can an issuer perform "due diligence" on itself? Again, likely not. Under the proposal, a Tier 1 Finder cannot perform due diligence either. The end result is that NO DUE DILIGENCE is performed.
An investor has the right to expect some type of "due diligence" to have been performed. Without a broker dealer involved, that will not happen.
Perhaps the largest negative of most private placements is lack of liquidity. If an investor realizes that a private placement is not going well after they invest, they do not have the opportunity to exit the investment, even at a substantial loss! Assuming that investors who have an attained level of net worth, allows them to have the ability to evaluate a business plan/proposition is probably amiss. The financial, regret, and mental pain of having made an investment that the investor knows is destined to fail cannot be overstated. Even wealthy investors do not like to "chained" to a failing investment. It is important to note that private placements are illiquid, complex products that should not be pitched to unsophisticated, unqualified, or unsuitable customers.
The following further emphasizes the retail investor's right to receive a "fair shake" in investing directly from SEC regulations:
"Under Regulation Best Interest, broker-dealers and their associated persons will be required to act in the best interest of the retail customer at the time [a] recommendation is made, without placing the financial or other interest of the broker-dealer or an associated person making the recommendation ahead of the interests of the retail customer. They also will be required to address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where the Commission has determined that disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict. As a result, Regulation Best Interest should enhance the efficiency of recommendations that broker-dealers provide to retail customers, allow retail customers to better evaluate the recommendations received, improve retail customer protection when receiving recommendations from broker-dealers, and, ultimately, reduce agency costs and other costs." [p 374, SEC Rule 34-86 Unregistered "Finders" (Type I and Type II) will not be subject to SEC Rule 34-86031 Regulation Best Interest.

As unregistered individuals, they will have no duty of care, no obligation to mitigate or resolve conflicts of interest, no disclosure obligations, and no regulatory compliance obligations. Unregistered Finders will not be required to know their customer, consider alternative investments, disclose fees and costs included in the investment, or follow any of the other regulatory rule protections in place in the regulated market. Retail customers, including our vulnerable seniors, will be completely exposed to potentially unscrupulous issuers and Finders who will be soliciting them for their hard-earned investing dollars.
The SEC spent a tremendous amount of time and resources to resolve the investing public's confusion over who is a registered representative (broker-dealer) and who is an investment adviser (investment advisory firm), and what is the difference between the two. The regulated financial services industry spent a staggering amount of time and resources, easily hundreds of millions of dollars, to meet our regulatory obligations in answering these questions for our customers. Yet, unbelievably, right on the heels of the implementation of this full-scale, nationwide effort to resolve investor confusion regarding the role their regulated investment professional is acting in (RR or IAR), the SEC is proposing to create a brand-new area of confusion for the investing public. This proposed order is antithetical to everything the SEC purportedly represents by way of investor protection and, additionally, makes absolutely no sense to anyone who has been party to the Regulation Best Interest, Form CRS endeavor, or for that matter the capital raising (investment banking) market.
Unregistered "Finders" (Type I and Type II) will not be subject to SEC Rule 34-86032 Form CRS Relationship Summary. Unregistered Finders will not be required, as regulated persons and entities are, to disclose deal fees, costs, any conflicts of interest that exist, whether or not they have any legal or disciplinary history (they may actually be individuals who have been kicked out of the industry!), and they will not be held to the same standard of conduct that regulated persons and firms are when we are providing products or services to our customers. It makes no sense for the SEC, or any regulator, to either create a brand new and confusing-to-investors category of unregistered "Finders" or to encourage our existing registered professionals to deregister and move to conduct such an important role without regulation or oversight.
This proposed pool of unregulated brokers, who may or may not have a criminal background, are almost certainly not trained as investment professionals, have no duty of loyalty or care to a retail or institutional customer, and are in the market to chase fees that will be paid by unsuspecting retail and senior investors, should be of concern to everyone. This proposal and all it entails is profoundly troubling as it leaves America's retail and senior investors, specifically, completely exposed to incompetence, unethical behavior, and fraud.
The disproportionate regulatory scrutiny of the private placement market (typically small company capital raising) by both FINRA and the SEC has unfortunately forced many broker-dealers out of this market. There are hundreds of additional broker-dealers that want to support small companies in their effort to raise capital, but for the regulators' clear messaging and actions around their dislike and distrust of alternative investments, including private placements. Broker-dealers find themselves caught in between small companies and our regulators on this issue; wanting to support small company raises including MBE and WBE capital raises, but being forced out of the space by our regulators – all while the SEC proposes to permit unregulated persons to participate in private placement activity. None of this makes sense from where we sit. We encourage the SEC to analyze the increased regulation and unbalanced examinations and enforcement actions, compared to other asset classes, that have created a regulatory barrier to registered investment professionals and their member firms from supporting small companies (while protecting investors) and participating in the private placement offering market. If you want more industry specialists to participate in this market, address and resolve the undue regulatory concentration on the responsible, regulated participants.
Below are responses to some of the questions posed in the Notice:
1. No, we do not believe the SEC has accurately and completely identified the legal (and moral) uncertainties around involvement by unregistered, unregulated Finders in "connecting" investors with small firms in need of capital. We believe investor protection is being abdicated in this proposal and wholeheartedly agree with Commissioner Crenshaw's assessment that this is, in fact, a radical departure from established registration requirements that expands the scope of investor solicitation activities by unsupervised agents in private markets. This is a 180 degree turn from the history of SEC regulation.
2. Yes, the SEC has appropriately defined Tier 1 and Tier II Finders; we oppose both.
3. We oppose the entire concept of unregulated Finders, whether they are US residents or not.
4. Yes, absolutely the definition of Finder should be limited to natural person, however we oppose the concept of an unregistered, unsupervised Finder.
5. No, the proposal does not provide a workable path for Finders to be engaged in this activity because of the potential investor harm that this proposal creates.
6. The definition of accredited investor was recently expanded and those of us in the industry would underscore that all accredited investors are not created equal; some are sophisticated and some, most definitely, are not. The array of types of customers with varying degrees of investing experience and overall knowledge of the industry is so wide that we think this proposal completely misses the mark on investor protection.
7. Yes
8. While we oppose this proposal in its entirety, in an attempt to be responsive to this question, if the SEC's concern revolves around sub-$5M capital raising, that is the limit that should be imbedded in the proposal.
9. No, we oppose legitimizing the concept of a Tier I Finder.
10. No and No, of course it's not workable, which is exactly why they will not comply with that aspect – or any – frankly, of this proposal.
11. If you move forward, yes you should define capital raising transaction, including the threshold.
24. An alternative to this proposal, and one we would support, would be to require Finders to be fingerprinted and be on file with the SEC, to permit broker-dealers to submit Finders as NRFs through CRD, and subsequently permit broker-dealers to pay unregistered NRF Finders transaction-based compensation. This would bring them into the regulated part of the industry, permit the

regulated broker-dealer community the opportunity to supervise the conduct in respect to protecting the customers, and extend regulatory jurisdiction to this pool of individuals.
26. Absolutely not. The SEC is presently attempting to force Family Office “converters” and others into 15a registration, why would you contemplate the creation of a new path to conversion?!
30. No, the SEC should NOT consider codifying the M&A Broker Letter.
31. In general, the SEC should clear up the confusion around 15a.
32. The SEC should be following the requirements of the APA and stop circumventing Congressional mandates contained in the APA.
35. Why would the SEC seek to limit an individual from taking advantage of the loophole it is creating just because they had been an associated person of a broker-dealer within the previous 12 months? What is the foundation of this seemingly flagrant bias against broker-dealers and their associated persons?
36. No, again, what is the rationale for penalizing a registered individual? If you’re not only okay with unregistered Finders, but are actually sanctioning the creation of this category, why would you attempt to prevent a registered individual from moving over into this newly created pool? How can you justify that bias against an RR or an MA?
37. No, why would the SEC even contemplate placing artificial and subjective limitations on who can participate in the Finders market? The fact that the SEC would even ask these questions is troubling.
38. Absolutely not.
39. Without question, yes.
40. Finders should be able to make introductions to broker-dealers and be paid a commission. The Tier II Finders are essentially unregistered brokers, so we would hold they should either affiliate with a broker-dealer or become one themselves.
41. Yes, require them to take licensing examinations and register with a broker-dealer.
In closing, in our opinion, the proposed order would weaken investor protections and create a massive loophole for individuals who should be required to register as Finders, M&A Advisors, and broker-dealers. Under this proposal, Finders would be exempt from basic sales practice rules and they would not be required to register with the SEC or FINRA. Further, they would not be subject to regulatory inspections or examinations or maintain records of their activities – this would be the Wild, Wild West, all over again. This is a dangerous proposal to investors. This proposal stands in stark contrast and opposition to every other activity the SEC is involved in, in relation to customer protection and investor confidence, more stringent rules for the “gatekeepers” (broker-dealers), the bevy of 15a investigations and actions taking place away from this proposal, and much more. We would, however, for the record, like to again, state our opposition to this proposal.
Thank you for your time and consideration of our comments.
Sincerely,
Robert L. Hamman, President
First Asset Financial Inc., An SEC Registered Firm