

MEMORANDUM

To: File No. S7-13-20 – Finders Proposed Exemptive Order, Release No. 34-90112

From: Office of the Advocate for Small Business Capital Formation

Date: October 7, 2020

RE: Finders Proposed Exemptive Order: Overview Chart of Tier I Finders, Tier II Finders and Registered Brokers

As part of our Office's effort to encourage feedback from small businesses, their investors, and other small business marketplace participants on the impact of the Commission's [Proposed Exemptive Order](#) our Office created an overview chart, attached below, that illustrates a comparison of some of the permissible activities, requirements and limitations outlined in the proposed exemptive order granting a conditional exemption from broker registration for finders. For more information about the office see www.sec.gov/oasb.

Finders Proposed Exemptive Order: Overview Chart of Tier I Finders, Tier II Finders and Registered Brokers

The below chart¹ provides a summary overview of some of the permissible activities, requirements, and limitations outlined in the proposed exemptive order granting a conditional exemption from broker registration for finders.² The proposed exemptive order has not been finalized and remains subject to change. Finders may not rely on the proposed exempt activities, requirements, and limitations outlined below until such time they are made part of a final operative exemptive order, if any, issued by the Commission.

		Proposed Finder Safe Harbors		Registered ³ Brokers
		Tier 1 Finders	Tier 2 Finders	
WHO	Natural person	✓	✓	✓
	Entities (including crowdfunding platforms)			✓
	Associated person of a broker-dealer			✓
\$	Transaction-based compensation	✓	✓	✓
INVESTORS	Accredited investors	✓	✓	✓
	Non-accredited investors			✓
ISSUER	Non-reporting (private) company	✓	✓	✓
	Reporting (public) company			✓
OFFERING	Primary exempt offerings	✓	✓	✓
	Secondary sales			✓
	Registered offerings (e.g., IPOs, follow-on offerings)			✓
PERMITTED ACTIVITIES	Provide investor contact information to issuer	✓	✓	✓
	Identify, screen, and contact potential investors		✓	✓
	Distribute issuer offering materials to investors		✓	✓
	Discuss issuer information included in offering materials		✓	✓
	Arrange or participate in meetings with the issuer and investor		✓	✓
	Structure the transaction or negotiate the terms of the offering			✓
	Engage in general solicitation			✓
	Handle customer funds or securities			✓
	Power to bind the issuer or the investor			✓
	Participate in the preparation of sales materials			✓
	Perform independent analysis of the sale			✓
	Engage in due diligence activities			✓
	Assist or provide financing for investment purchases			✓
	Provide advice as to the valuation or financial advisability of the investment			✓
May participate in more than one capital raising transaction within a 12 month period		✓	✓	
OTHER TERMS OF EXEMPTION	Anti-fraud protections apply	✓	✓	✓
	Written agreement with issuer required	✓	✓	*
	Written disclosure to investors required		✓	✓**
	No statutory disqualification	✓	✓	✓

* Depending on the activities a registered broker engages in, it may be required to enter into a written agreement with an issuer.

** While the proposed exemptive order prescribes clear disclosure criteria required of Tier II Finders, whether and the extent to which a broker-dealer is required to provide disclosures is generally based on the nature of the transaction and the rules and provisions of the Exchange Act that apply to the specific transaction.

¹ This chart was created by the Office of the Advocate for Small Business Capital Formation and highlights several of the proposed terms of the conditional exemption from broker registration. It is not a rule, regulation, or statement of the Securities and Exchange Commission (“Commission”). The Commission has neither approved nor disapproved its content. This chart, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person. We encourage you to look at the proposed exemptive order for more details and to share your feedback!

² As described in the proposed exemptive order, the Commission has not broadly addressed the other types of specific activities that might implicate the Commission’s regulatory regime for brokers. Activities that go beyond the scope of the proposed safe harbors outlined herein (and any that may be adopted) and ultimately whether a person is a broker within the meaning of Section 3(a)(4) turns on the facts and circumstances of the matter.

³ See 15 U.S. Code § 78o and applicable provisions of the federal securities laws and related rules and regulations. Different types of broker-dealers may engage in different types of activities. For purposes of this chart, we are assuming that a registered broker-dealer satisfies all applicable requirements and has received all necessary approvals to engage in the identified activities. There are a variety of legal requirements, including Commission and FINRA rules, that apply to transactions involving registered broker-dealers, not all of which are highlighted in this comparative finders chart. For additional information on registration as a broker-dealer, see the Division of Trading and Markets’ [Guide to Broker-Dealer Registration](#).