

Robert J. Dickson

October 21, 2020

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: File No. S7-13-20

Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of the Securities and Exchange Act

This is a response to the Securities and Exchange Commission's ("SEC") proposal to grant exemptive relief to permit natural persons ("Finders") to engage in certain limited activities on behalf of issuers, without registering as brokers. Thank you for your efforts to facilitate the flow of capital to businesses, particularly emerging businesses.

While the proposed regulations are an excellent first step, an overall approach such as outlined below, would make any better and more sustainable regulations.

- Only create one tier or class of Finder, similar to that of a Tier II Finder, and broaden the eligibility to include professional service providers such as lawyers, CPA's, financial management consultants, etc.
- Develop comprehensive guidelines and review, evaluate, and incorporate appropriate points from prior letters so only one set of comprehensive regulations exists. The intent would be to preserve the concept of a Finder but have robust regulations and guidelines.
- Require on-line registration of a Finder with the SEC and confirmation or understanding and intended compliance with the regulations and guidelines, within three days of signing a contract with an issuer.

Following are responses to the 45 questions posed by the SEC in the proposal:

1. Have we accurately and completely identified the legal uncertainties, if any, around the involvement by Finders in connecting investors with small firms in need of capital? Perhaps, but a more comprehensive set of guidelines and a regulation should be developed. In addition, these Federal regulations may not provide the benefit intended since most states' security laws require registration or licensing of finders.

2. Have we appropriately defined Tier I Finders and Tier II Finders? No. Tier I Finders have not been adequately defined. Defining a Tier 1 Finder as someone who only provides contact information for individuals reasonably believed to be accredited investors invites the development and sale of a “contact” list. This could become similar to the sale of names for other commercial purposes. Once an accredited investors name is on such a list they could be overwhelmed by general solicitations from Issuers. Even though a Tier 1 Finder could only use the list once every 12 months, such a list could be easily shared among Finders.

Should there be two tiers of Finders or instead should there be multiple tiers of Finders?

Should there be only one tier of Finders? Tier I Finders should be eliminated and there should be only one tier of Finders, with the same regulations and guidelines for all Finders.

3. Should the definition of Finder be limited to natural persons? No, the definition of Finder should be expanded to include professional service firms such as law firms, CPA firms and financial management consulting firms. Such firms frequently have a knowledge of the issuer or a specialized industry knowledge and contacts which would be beneficial to an Issuer. Limiting the definition to natural persons creates a void in professional relationships between Finders and Broker Dealers.

4. Should the definition of Finder be limited to a natural person resident in the U.S.? Yes, the definition should be limited to a natural person resident in the U.S., who is a U.S. citizen. Expanding the definition of Finder beyond this creates an opportunity for Finders to be involved and then leave the country.

5. Have we appropriately identified the activities in which each tier of Finder should and should not be able to engage? See comment on elimination of Tier 1.

Does the proposed exemption provide a workable path for Finders to be engaged in this activity? Yes, except as commented on herein.

6. Have we appropriately limited the types of investors whom a Finder can “find” or solicit?
Yes.

Instead of limiting potential investors to those the Finder reasonably believes are accredited investors, should investors identified by Finders be subject to investment limitations, regardless of the exemption being relied upon, such as a dollar limit on the size of the investment? If so, please specify. No

7. Should the Finder be prohibited from engaging in general solicitation as proposed? No

Would this create practical problems for a Finder? Yes.

For example, would a Finder be able to establish a pre-existing substantive relationship with investors in order to not engage in general solicitation? Effective business leaders, who could be Finders, attempt to establish substantive relationships throughout their careers, on a continuing basis.

8. Should we limit the proposed exemption to offerings of a specific size threshold? If so, how should we define such threshold? No

9. Have we appropriately limited the number of offerings a Tier I Finder can participate in on an annual basis? See comments on elimination of Tier 1 Finders.

10. Is the limitation that Tier I Finders do not have any contact with potential investors about the issuer workable? Should we instead permit Tier I Finders to have some contact with potential investors? See comments on elimination of Tier 1 Finders.

11. Should we define “capital raising transaction” for purposes of Tier 1? If so, how? Yes, any form or equity or debt, including leases.

12. Have we appropriately defined the conditions that should apply to the proposed exemption for each tier of Finder? See comments on elimination of Tier 1 Finders.

Is more clarity, specificity or flexibility required with respect to the proposed conditions?
Review of previous letters and development of more guidelines.

Are there other or different conditions that should apply to the proposed exemption? None have been identified.

13. Should Finders be able to “find” or solicit investors only for exempt offerings, as proposed? Yes

Should Finders be able to “find” or solicit investors only for offerings under certain exemptions from registration? If so, which ones? No

14. Should Finders be able to “find” or solicit for all non-Exchange Act reporting companies or should they be able to solicit for a narrower or wider range of companies? Finders should be permitted to find or solicit for all non-Exchange Act reporting companies. The question contains the word “able” and the definition of able is not clear.

15. Should Finders only be able to “find” or solicit for primary offerings? No. The question contains the word “able” and the definition of able is not clear.

Should we expand the scope of the proposed exemption to secondary offerings, such as transactions facilitating the sale of equity by employees holding options or warrants? Yes, but only when the secondary offering is being made through the Issuer, since the Issuer is only capable of providing comprehensive information related to the offering.

16. Should the proposed exemption include limitations on the types of securities for which a Finder can “find” or solicit investors? Yes. Securities that are bundled or derivative in nature should be excluded.

17. Is more clarity or specificity required with respect to the specific written disclosures that are a condition of the proposed exemption for Tier II Finders? Yes. See comments on prior letters issued by the SEC.

Should we provide more guidance about any of the specific written disclosures? Yes, examples of contract language between Issuers and Finders; examples of language for Finders disclosures to potential investors.

18. Are there any specific written disclosures to investors that should be required, beyond those that are a condition of the proposed exemption for Tier II Finders? No

Should the disclosures be required to be written or should the Finder be permitted to provide them orally? Written

Should the written disclosures be required at all? Yes

19. Should we adopt comparable disclosure requirements with disclosures required under the proposed changes to Rule 206(4)-3 under the Advisers Act 97 for solicitations of investors in private funds, if adopted? Yes, for the sake of consistency.

Should the disclosures required by Tier II Finders be deemed to satisfy the disclosure requirements under the proposed changes to Rule 206(4)-3 under the Advisers Act 98 for solicitations of investors in private funds, if adopted? Only if completely consistent.

20. Should Tier II Finders be required to receive an acknowledgment of receipt of the required disclosure from the investor? Yes

If so, are there methods other than an acknowledgment, for example, a read receipt for e-mail, that could serve to validate that investors received the required disclosure? No, investors should sign and return the required disclosure document.

21. Should Tier I Finders be subject to a disclosure and acknowledgment requirement? Tier I Finders should be eliminated.

22. Should Tier II Finders be required to enter into a written agreement with the issuer where the issuer, without affecting the Finder's obligations, also assumes liability with respect to investors for the Finder's misstatements in the course of his or her engagement by the issuer?
Yes

23. Should the proposed exemption be conditioned on a Finder filing a notice with the Commission of reliance on the exemption from registration? Yes

Why or why not? Yes, filing a notice formalizes the Finder's role and provides some discipline to the process.

If so, when should Finders be required to file the notice? What, if any, disclosures should be required in the notice? Within three days of execution of an agreement with Issuer.

24. Should there be any limitations on the amount of fee a Finder can receive? Yes.

Frequently a Finder is paid from the proceeds of the issuance so the fee will diminish the value to the Investor. So, the fee should be no more than 5% of the amount secured from the Finders contacts.

25. Should we impose limitations on the form of compensation Finders can receive? No, issuers frequently desire to compensate Finders with stock. Finders acceptance of stock as compensation demonstrates a commitment to the issuers business.

Should Finders be prohibited in certain circumstances from receiving transaction-based compensation, and instead be required to receive compensation that is not tied to the success of the transaction (that is a fixed fee or other arrangement)? No. Issuers frequently rely on transaction-based, success fee arrangements.

If so, under what circumstances and how should Finders then be compensated? Fixed fee or other arrangements should be permitted.

26. Should a Finder be able to receive a financial interest in an issuer as compensation for its services? Yes.

Why or why not? Issuers frequently desire to compensate Finders with stock. Finders acceptance of stock as compensation demonstrates a commitment to the Issuers business. However, any agreement between the Issuer and the Finder should highlight that non-cash compensation, such as stock grants, may be subject to income taxes and the Issuer will issue a Form 1099.

27. Are the explicit limitations on the activities in which Finders can or cannot engage appropriate for each tier of Finder? See comment about eliminating Tier I Finders. Limitations on Tier II Finders seem appropriate.

What other activities should be expressly permitted or prohibited for each class of Finder? Finders postings of availability of offerings to attract potential investors on social media sites should be prohibited.

28. Should we provide guidance on how a Finder can establish that he or she did not know and, in the exercise of reasonable care, could not have known, that the issuer had failed to comply with the conditions of an exemption? Yes, the more guidance the better.

29. Should we provide further guidance on the solicitation-related activities in which Tier II Finders can engage on behalf of an issuer, for example, guidance surrounding a Tier II Finder's discussion of issuer information and arrangement and participation in meetings with issuers and investors? Yes, the more guidance the better.

30. Should we provide guidance regarding activities of private fund advisers, M&A Brokers as defined in the M&A Broker Letter,99 or real estate brokers that may require registration under Section 15(a) of the Exchange Act? Yes, the more guidance the better.

Should we consider codifying the M&A Broker Letter? Yes. See comment on compiling all guidance into one comprehensive regulation.

31. Are there other areas in which the Commission should provide guidance regarding the registration requirements of Section 15(a) of the Exchange Act to other types of limited purpose broker-dealers? None have been identified.

32. If the proposed exemption is adopted, which staff letters, if any, should or should not be withdrawn, and why? Over the years, individual issues have been addressed by a patchwork of staff guidance and no-action letters. All previous guidance and staff letters should be reviewed, evaluated and where appropriate included in the regulations or as guidance for Issuers and Finders. Then all previous letters should be withdrawn.

33. Have we appropriately defined the disqualification condition for Finders? Yes.

34. Have we appropriately limited the proposed exemption to individuals who are not associated persons of a broker-dealer? Yes.

35. Should the proposed exemption include a limitation such that it would not be available to individuals who were associated persons of a broker-dealer within the previous 12 months? No, any such limitation should be included in a non-compete agreement between the Issuer and the Finder.

36. Should the proposed exemption be limited to individuals who are not associated persons of a municipal advisor or investment adviser representatives of an investment adviser? No

37. Should the proposed exemption be limited to individuals who are not associated persons of an issuer? Yes

Why or why not? Individuals who are associated persons of the issuer could potentially be in a conflict of interest situation and should not be exempt.

38. Would the proposed exemption provide sufficient investor protections while promoting capital formation for small businesses? If adopted based on appropriate recommendations.

39. Would the proposed exemption have a competitive impact on registered brokers? Yes and no. The proposed exemption would create competitors for such services traditional provided by brokers. But brokers may determine that Finders can increase the effectiveness of raising capital. And Brokers may choose to engage Finders.

40. With respect to the activities permitted for Tier I Finders, what are the practical implications of the requirements if they were subject to broker registration? See comments on eliminating Tier I Finders.

What about for Tier II Finders? The practical implications are that the work now sometimes done in a grey area would be subject to definite regulations and guidelines.

41. Should we instead take an alternative approach for either class of Finders. Create one tier with robust regulations and guidelines.

42. Are there areas related to the proposed Finders framework for which the Commission should provide guidance? See previous comments on guidance.

43. Should we coordinate with other regulators to provide clarity and consistency on what types of activities Finders and other limited purpose brokers may engage in? Consider coordinating with all U.S. states.

44. Are there any other sources of data or information that could assist the Commission in analyzing the consequences of the proposed exemption? None have been identified.

45. Are there any other considerations in this regard that the Commission should take into account as it considers the exemptive relief? None have been identified.

Thank you for proposing the exemptive relief and please act expeditiously to finalize the proposal.

Sincerely yours,

Robert J. Dickson

Robert J. Dickson

Partner, McCracken

Affiliated Partners