November 6, 2020

Vanessa A. Countryman, Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549
Sent via email: rule-comments@sec.gov

RE: Release NO. 34-90112
File No. S7-13-20

Dear Ms. Countryman:

Thank you for the opportunity to comment on the Proposed Exemptive Order Granting Conditional Exemption from Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders.

As an SEC-registered broker-dealer, member FINRA and small business marketplace participant, we support an exemption from registration for a Tier I finder, however we believe that scope of permissible activities for a Tier II finder as currently proposed is too broad, may result in risk to private placement investors and negatively affect the integrity of the private placement intermediary role. We would encourage the consideration of a more middle-ground approach. We ask why the Commission is not considering policy to better encourage firms/persons who are already registered to service these private Issuers, but instead is proposing to create an entire subset of unregistered placement agents? We wish to share our concerns on the current proposal, as well as offer alternative solutions for consideration.

Our two largest concerns with the proposed exemptive order are increased risk to investors and a lack of sufficient and conclusive analysis regarding existing broker-dealers' roles in these transactions.

Risks to Investors

As currently proposed, Tier II finders would be permitted to offer the same services that registered placement agents offer for the same contingent compensation to an unlimited number of issuers, an unlimited number of investors yet be subject to none of the rules, oversight, or examination. Many broker-dealers that offer private placement agent services are permitted to hold neither customer funds, nor securities. These firms do not bind the issuer or the investor or provide financing. Private placement Issuers that seek non-institutional passive investors often do not hire the broker-dealer to structure or negotiate the deal or put together offering material.

As an example, let us say that Issuer A approaches a small broker-dealer with their PPM and ask the small broker-dealer to sell their offering to their registered representatives' network of accredited investors. The small broker-dealer will be obligated to assess, through proper due diligence, whether the deal looks to be sound, whether the offering is presented in a manner that is fair and balanced, whether the Issuer is able to meet an exemption from registration or is properly registered as an RIA, evaluate whether they are conducting their offering in a manner that looks to meet the identified

exemption from registration, that disclosures appear adequate and diligence the persons and/or entities behind the offering. If the broker-dealer decides to proceed, they will be subject to rules that ensure their compensation is reasonable. Each distinct obligation a broker-dealer holds we assume was set to add a layer of protection for the investor before he/she invests in an illiquid, high-risk securities investment that is frequently offered under complicated terms and fees.

What if in our example the small broker-dealer does not agree to offer the securities offered by Issuer A because it was determined to be problematic – Issuer A can now just pay any Tier II finder to sell the same deal. The unregistered finder may/may not have any background or expertise in understanding the risks of offering, but stands to make a nice commission based on how much he/she can sell?

We should acknowledge that problematic offerings are weeded out through diligence – having an unregulated pool of salesmen that are not trained, required or even permitted to perform diligence could result in Issuers bypassing the regulated community all together – why deal with the hassle of diligence? In its current form, Tier II finders can fully be in the business of selling private placements with no regulatory oversight. We believe this results in risk for investors, but ironically too may result in investors who trust only in regulated sales staff to never see private placement opportunities – the Issuer may just hire unregistered finders.

Finally, the "conditions" that would apply to Tier II finders are not meaningful. They will not be enforced, followed, and no records will be retained.

Lack of Sufficient Analysis on Regulations Affecting Broker-Dealers

The notice stated that few registered broker-dealers are willing to raise capital in small transactions. We would request that a thorough examination of that statement is conducted.

1. Why would a broker-dealer turn down revenue that could be generated from a small capital raise? Revenue from a $5MM private placement is material, especially for a small firm. Is it possible that firms decline these deals because the offerings are problematic after proper diligence?
2. Alternatively, has there been an analysis of the regulatory attention on the broker-dealer's role in private placements, especially considering the benefit of time since the loss' experienced by private placement investors after the financial crisis of 2007-2008? From the industry perspective, many small firms have felt regulated out of the space – we have investors and registered representatives who want to participate in these deals, but the regulatory attention is too critical.
3. Reg BI now applies to firms/their registered representatives who offer private placements to any accredited individual investor, regardless of their sophistication or experience. It is counter-intuitive just months later to propose that unregulated persons can sell an unlimited number of private placements to an unlimited number of accredited investors for an unlimited amount of commissions and have no such applicable regulations.

Possible Alternative Solutions

We would urge you to consider alternatives to a Tier II Finder. We believe that the following solutions may achieve the desired goal of facilitating investments in small businesses while maintaining adequate protections for investors and the integrity of the intermediary role in the private markets.

1. Instead of a blanket exemption for non-securities professionals to take over private placement sales, assess what can be tweaked within the securities industry. One size does not fit all.
    a. FINRA Capital Acquisition Broker was a step in the right direction but has not gone far enough. Consider what will encourage more professionals to conduct their business transparently in a registered capacity. For example, CABs still are required to have PCAOB audits, which is a major deterrent for many.
    b. Consider removing Reg BI obligations on those activities that were permitted under Tier II. It makes no sense that such activities would not require registration and trigger Reg BI at the same time. Consider providing clarification that a registered representative/broker-dealer engaged in these "soliciting" activities are not "recommending" and therefore alleviating Reg BI application on certain private placement activities to encourage far more interest/activity in these private deals by professional intermediaries (FINRA member firms and their registered persons).
    c. It was not acknowledged in the notice that finders often want to refer his/her Issuer relationships to a broker-dealer, or his investor contacts to a broker-dealer. In this case, the finder/referral source does not want to be in the business of selling private placements. He/she instead wants to refer it to the professionals and get a cut of any contingent fee if the Issuer/Broker end up with success. As a FINRA member, our hands are tied here - we strongly urge that you consider a Tier I finder or similar being able to share in fees with a broker-dealer. This could increase small business private market investments without exposing the investor to new/greater risk.
2. There is already a framework set up for an "Issuer's Exemption." Consider expanding the permitted scope of this to include captive employees who may be compensated contingently based on their success. This would be less confusing because it will be clear that the Issuer is selling its own product and will be held accountable for the employees acting under the Issuer's control.

Please find our responses to some specific questions posed within the Request for Comments section of the notice. Numbers below coordinate with the question number.

1. We do not believe the proposed exemption identifies all legal uncertainties. We urge you to consider the role of the finders who wish to be paid by broker-dealers for referring either companies who seek to raise capital or end investors looking for private placements. We currently cannot share commissions/success fees with them, even if they only refer the business to us.
2. Tier I finders are appropriately defined. Playing such a limited role does not make the individual "in the business of." We believe that Tier II finders would permit far too broad a role in selling private placements. Their activities would mirror those of a typical non-institutional placement agent conducted by a broker-dealer.
3. Yes, the definition of Finder should be limited to natural persons. Otherwise, this opens any company to earn transaction-based selling compensation for private placements.
4. We do not see why a Tier I finder would need to be a resident of the U.S.
5. A Tier II finder should only be permissible if he/she is part of the Issuer – an actual employee under control of the Issuer whose job is to raise the money. If a third-party individual is hired to run all this business and can do so for multiple issuers, they are truly acting as a broker. If the commission believes these activities don't need full registration, consider alleviating product specific testing requirements, create a new registration category that is abbreviated entry, etc. but retain the requirement for registration/affiliation with a supervising broker.

6. The proposal is pitched as helping small business and further helping minority/female-owned businesses. If that is the intent, it should be limited to such. There is currently no limitation on deal size, fee size or issuer size, though a Tier I finder seems reasonable as proposed due to limited role.
7. General solicitation should be prohibited.
8. The proposal states that broker-dealers generally do not service private placements of $5MM or less. If that is the case, then this should apply to offerings that are $5MM or less.
9. 1-3 deals per year, especially if the Tier I finder could provider investor OR issuer introductions to the broker-dealer community for a contingent fee.
10. We believe that communication about the issuer for a Tier I finder may be permissible. Communication about any specific offering or circulating any materials related to an offering, etc. is too broad and turns into solicitation.
30. No. The SEC should not consider codifying the 2014 M&A No Action Letter. This question appears out of place in this proposal as is not relevant to finders on private placements. We know that legislation regarding this topic has been introduced in congress but has never passed the Senate – it is troubling for the SEC to consider sidestepping this legislative process. Organizations like SIFMA and Americans for Financial Reform have repeatedly gone on the record in opposition. An M&A exemption would expose small business owners to unnecessary risk without any meaningful benefit. FINRA member firms have long helped business owners successfully retire through complex change of ownership transactions involving securities. M&A advisors are relied on for structuring and negotiating complex and often large securities transactions, preparation of all sales material, performing independent analysis of the proposed sale, leading extensive due diligence activities and providing advice as to the valuation or financial advisability of the transaction – transactions that contain multiple securities components. M&A brokers work under the inherent conflict of transaction-based compensation. A barrier to entry, transparency and oversight is critical to maintain the integrity of this important function. There are significant numbers of properly registered M&A professionals at broker-dealers large and small who service M&A – it makes no sense for the industry to encourage such professionals to de-register and move to conduct such an important role without regulation or oversight.
39. The Tier II would have a significant negative impact on small registered broker-dealers and their registered representatives for the reasons discussed previously in our response.
40. We believe that Tier I finders should receive an exemption from registration – however, we further believe that they should be permitted to introduce Issuers and/or Investors to broker-dealers and share in any resulting success fee. We have real-world experience that there are finders who wish to do this for a fee – this arrangement would afford the protection of a regulated intermediary. Tier II finders should be registered. Many broker-dealers and their registered representatives offer only the services listed under Tier II finder. A consideration of limiting the qualification requirements and the other regulatory reliefs previously discussed should be considered.
43. Discussing appropriate regulatory relief with FINRA on solutions like member firms sharing with finders could lead towards the end goal of better facilitating investments in private small businesses without posing new risk to investors.
44. We would encourage the SEC to thoroughly analyze extensive data FINRA maintains on private placements – what regulatory attention, increased regulation, enforcement action, arbitration results, etc. may have dissuaded professional licensed and registered intermediaries from assisting issuers on private placement offerings.

We appreciate your consideration of our comments.

Most sincerely,

Jessica Pastorino
President & CCO
M&A Securities Group, Inc.