



## ANGEL CAPITAL ASSOCIATION

November 6, 2020

Virginia A. Countryman, Secretary  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, DC 20549-1090

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

Dear Ms. Countryman:

On behalf of the Angel Capital Association (ACA), the 14,000 accredited angel investors we represent, and the thousands of innovative entrepreneurs we support, we would like to offer the following comments on the Proposed Exemption from Broker-Dealer Registration for Finders issued on October 7, 2020.

We are pleased that the Commission continues to examine and propose mechanisms for increasing the access to capital for start-ups and small businesses raising funds from accredited investors through the private markets. The pending proposal provides a framework for Finders to engage in certain limited activities without registering as brokers.

The Angel Capital Association has traditionally discouraged the utilization of excessive fees for individuals and groups who charge entrepreneurs for introductions and connections to potential investors. Indeed, many ACA-member angel groups observe a code of conduct precluding members from taking such payments. However, we also recognize that, in some cases, Finders can provide a specific role in facilitating capital formation for nascent, early-stage small businesses that often struggle to find cost-effective methods to raise funds beyond their immediate circle of family and friends. We have found this to be particularly true in smaller, less urban locales where the density of accredited investors is limited.

While the draft proposal contains restrictions and levels of disclosure to address concerns over fraudulent or inappropriate behaviors, the ACA believes that the Commission can further tighten the rule in three aspects:

- 1) First, we would propose that the rule clarify that Finders shall be compensated only on the amounts of funds they are able to raise, rather than the total funds raised in a particular funding round. This clearly compensates the Finder for correlated introductions. Also, a recommended fee structure, like broker schedules, would provide guidance on reasonableness and ethical standards.

2) Second, as presently drafted, if a finder misrepresents his or her compliance with the criteria of a Tier 1 or Tier 2 Finder such that he or she does not qualify, and the issuer relies on such representations in good faith, the resulting sale would likely be deemed a sale through an unregistered broker. While the issuer may have contractual claims against the finder, this would seemingly create a liability for the issuer to the investors. We would suggest that the Commission staff examine language that insulates the issuing entity, particularly when it is a young start-up firm, from Finders' actions that may violate the SEC conditions included in the proposed rule or that misrepresent the nature of the potential investment.

3) Third, we would recommend that the SEC consider including a pre-emption clause to protect small business issuers from liability for non-compliance with state securities laws and regulations. Under this proposed Federal rule, the Finders Exemption would apply uniformly across all jurisdictions within the United States. However, this would only be true if states enact similar or duplicative exemptions from their broker-dealer registration requirements. Failure to provide parallel exemptions at the state level would undermine the intent of the proposed Federal Finders Exemption. Thus, we believe the most expedient solution would be a Federal exemption provision.

We appreciate the Commission's continuing efforts to improve capital formation rules for young companies and we appreciate the opportunity to comment on these draft rules. Our organization is available to respond to questions or requests for clarification on the above recommendations.

Sincerely,



Pat Gouhin  
Chief Executive Officer



Tony Shipley  
Chairman of the Board