Public Comment

SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-90112; File No. S7-13-20]
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
AGENCY: Securities and Exchange Commission.
ACTION: Notice of proposed exemptive order; request for comment.

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

Yes.

There is no need to compensate a finder at the same level as a registered agent or broker dealer. The exemptive order indicates that the Finder, regardless of tier classification, will not perform the duties of a registered agent or broker dealer. They would serve as a conduit and not an agent. The lion's share, of the funding, therefore, should go to the issuer or funding target. The Finder will not have the responsibilities or incur the costs to which registered agents and broker dealers are subject. Finders will not be regularly examined by the SEC or FINRA and will not have to hire compliance officers, follow CIP mandates, encrypt data, archive emails, compensate mangers or series 24 representatives to review and approve security transactions, pay outside AML auditors, pay outside PCAOB auditors, pay for Firm element courses to keep registered agents appraised of new regulations and their ongoing responsibilities to their clients, pay FINRA renewal or SIPC fees. If the goal of this proposal is to benefit those smaller businesses that need funding, the compensation to the Finder should be limited to a 2% cash fees with no additional security compensation, which would leave 98% of the raised funds for the issuer. Allowing these smaller businesses to receive 98% of the raised funds will give them a better chance for success.

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

No.

Why or why not?

The finder should not be compensated with securities issued by the smaller business. Unlike a registered agent of a FINRA broker dealer, the finder in not subject to regular reviews of his or her brokerage statements, nor is the finder subject to a restricted trading list. The finder will not receive insider trading training or be supervised by a series 24 supervisor and a compliance officer. It would be far more difficult for the SEC to police and enforce the insider trading activities of a finder than it is to monitor the activities of registered representatives. In addition, there is nothing to stop finders from receiving

compensation in the form of securities that preference their own interests over those of the investors. Since the finder is not mandated to operate by the ethical standards of a FINRA registered agent, he or she has not broken any rules by accepting a better class of security than has been issued to the investors. The SEC can avoid this conflict of interest by limiting the compensation of a finder to the suggested 2% cash transaction fee.

Since the finder will not provide the services of a registered representative of FINRA, he or she should not be compensated at the same level of a registered representative of FINRA.

The finder need not be concerned with the liquidity of an introduced investment, but a registered representative has an obligation to confirm that a client understands the liquidity classification of an investment and the costs associated with monetizing both liquid and illiquid investments. Most accredited investors do not understand that very few broker dealers will clear low-priced securities issued by smaller businesses. Even fewer accredited investors understand the process of preparing 144 stock or restricted securities, commonly issued by smaller businesses, for open market transactions. The cost to monetize the stock of a low-price OTC listed security has increased steadily over the last ten years. If you can find a broker dealer willing to accept a stock certificate issued by a smaller issuer they will charge up to 5% on just the trading piece of the monetization process, add to this the broker dealer review fee, ticket charges and opinion of council, and the fees quickly add up to thousands of dollars. With no one to explain the cost to exiting and the liquidity level of an investment, the accredited investor may not be able to digest the true risk and likely expenses surrounding this type of investment. A registered and licensed FINRA agent is subject to arbitration and public disclosure of all accusations should a client claim they did not understand the investment purchased through the registered agent. This is a risk for the registered agent and creates a liability that the finder will not have. Because the finder does not have the FINRA agent liabilities or the expenses of a FINRA member, the finder should not be allowed to charge the same commissions as registered agents or broker dealers.

Should we limit the proposed exemption to offerings of a specific size threshold? If so, how should we define such threshold?

Yes.

Limiting the dollar value of the offering focuses the interest of the finder to those smaller businesses that are not otherwise able to find investors. This seems to be the overarching purpose of this relief program.

Finders, in business for themselves, will be driven by profitability. If the SEC does not limit the dollar value of the offering, finders will focus on larger and easily-funded issuers, which is a significant problem with the current system and the reason the SEC has brought about this exemptive relief program. Specifically, if there is no limit to the dollar amounts of offerings, registered agents and broker dealers who focus on private placement funding for private companies will probably uniformly withdraw from registration or not register at all, leading to a mass migration of private placement firms away from SEC/FINRA registration. Why does this matter? Should this happen, the SEC will create a new class of finder that did not exist prior to the exemptive relief provision, and private placements will be largely conducted by unregistered agents. Why would anyone carry the cost, exposure and liability associated with FINRA registration if they can conduct the same business as an unregistered agent? Moreover, it is

unlikely that finders will be able to demand exclusive commitments from small businesses for their services because the exemptive relief only allows natural persons to be finders. Without restrictive or limiting exclusive contractual obligations to broker dealers as placement agents, these transactions will be open to all finders. As a finder, why concentrate on the hard to fund small transactions when they can be compensated sooner by focusing on deals that are much easier to fund. Smaller business will continue to be neglected. However, if the SEC limits the funding dollar amount to $2,000,000.00 per quarter and limit the compensation paid to the finder, as discussed earlier, you curtail the migration away from FINRA/SEC registration and focus the unregistered finder community on those companies that are not being currently funded by the broker dealer community, broadening the range of funding opportunities.

"…Securities Act is intended to address concerns that have been raised over the years regarding the perceived inability of smaller companies to engage the services of a broker-dealer to assist with opportunities to raise capital in exempt offerings."

The exemptive order does not provide a definition of "smaller businesses," and doing so may prove to be restrictive. It would not be necessary to define a small business if there is a reasonable limit to the size of finders' offerings. This would also allow funding events to occur for a wider variety of businesses and provide infrastructure that would assist even large private companies that are in need of rapid funding. Taken together, the timeliness of the exemptive relief funding effort and the proposed 2% limit on finders' fees creates a vehicle for faster and more effective capital infusion events. In the broader sense, this could prevent layoffs and bankruptcies for a wide range of developing businesses struggling through the COVID-19 crisis or other future difficulties.

Also, limiting the size of offerings will reduce the dollar amount of unchecked money laundering activities that may be inadvertently introduced by finders to investors. Consider AML concerns: In their day to day operations, broker dealers are responsible for filing SARs reports, identifying red flags, addressing those red flags and notifying the applicable regulatory or jurisdictional body of fraudulent or illegal activity. If most of these transactions are done outside of FINRA registered broker dealers' supervision, there will be no one trained as a FINRA AML officer reviewing and monitoring the finder's transactions. There will be no analyses done on patterns or frequencies at which investors are committing capital. It is clear that the SEC has come to terms with the potential for an increase in fraudulent activity, investor fraud and other abuses. Indeed, these drawbacks may be a necessary price to pay for creating funding opportunities for smaller business. A specific size threshold, however, would limit the accredited investor's and smaller businesses' exposure to the activities of money launderers and others who intent is to abuse the system.

In 2018, the Customer Due Diligence Rule was created to prevent criminals and others looking to hide ill-gotten proceeds from accessing the U.S. financial system anonymously. The rule is designed to aid law enforcement in financial investigations, prevent evasion of targeted financial sanctions, improve the ability of banks to assess risk, facilitate tax compliance, and advance the U.S. compliance with international standards and commitments. This rule states "Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program. Since there will be no due diligence, background checks, OFAC checks, FINRA finger printing/FBI back ground check for finders, the SEC is accepting that this exemptive relief

will create an unchecked opportunity for foreign or domestic terror groups to inject capital into our financial system and potentially be rewarded with transaction based commissions to do so. Again, limiting the size of these transactions will limit the amount of investor capital exposed to these unsupervised transactions without limiting the number of smaller businesses that would receive capital.

To be clear, businesses that require and are worthy of receiving more than $2,000,000.00 in investment capital a quarter do not have a problem receiving the necessary capital to grow their business via a FINRA registered broker dealer engagement. Especially now, broker dealers are in constant pursuit of these larger funding opportunities.

The language of the SEC exemptive relief program does not address a simple truth, that if a business of any size is not credit worthy and does not have the potential for success, then no one should invest in them. A broker dealer conducts a mandatory review of a business before engaging in a private placement. If the company is neither suitable nor sustainable, the broker dealer declines the engagement. This type of review will not be performed by finders soliciting investors. In addition, businesses that require more than $2,0000,000.00 per quarter will most likely receive funding from a larger pool of investors and require investors to commit larger amounts of capital and have higher levels of investment experience and structure competency. These larger offerings, therefore, should only be sold by agents and brokers licensed by FINRA to conduct security transactions, specifically:

- agents that are employed by firms that provide training, licensing, and supervision,
- agents that a client can research on FINRA's broker check platform,
- agents that are liable for their actions, while acting in the client's Best Interest,
- agents that can answer questions about structure, liquidity, and conduct suitability analyses.

If offering size and commissions to finders are not capped, there will be a mass exodus from FINRA registration and most private placement broker dealers will likely shudder. Instead of supporting new business and expanding the workforce with new jobs, the SEC will be trading one employment opportunity for another. The support positions, compliance officers, archiving contractors, PCAOB auditors, AML auditors and the FINRA and SEC field agents that examine these private placement broker dealers will be out of work.

In addition, limiting the dollar amount will ensure that the private placement activity for the larger transactions will not be done away from the broker dealers and thereby eliminate the commissions paid to those brokers that require registration to conduct other broker dealer business for their clients, business that is different from their private placement activity. If you proceed without limitations on offering size you take the placement activity out of the hands of the qualified, trained, supervised brokers and place it in the hands of individuals that do not have to take the series 7 exam or worse yet, individuals that tried and could not pass the series 7 exam.

Have we appropriately limited the types of investors whom a Finder can "find" or solicit?

No.
To determine that an individual is an accredited investor, a finder must analyze the financial conditions of the potential investor; this will require training the finder. It is not enough for a

finder to send a prospective investor a form outlining the qualifying tenants of an accredited investor. The finder must understand the qualifications of an accredited investor to determine that the prospective investor is accredited. Keep in mind, these finders may not have been exposed to FINRA or SEC rules. They may not have an educational background in finance and probably have not passed the FINRA series SIE, 7, 63 or 79. This is a problem for which I do not have a solution. The finder will not have access to the client's brokerage account to determine if they have the assets to be deemed accredited, so what do they rely on to make a good faith determination? Can the finder cold call random individuals, hoping to find and an accredited investor?

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.

Since it is reasonable to assume the finder has not been trained to recognize red flags, suspicious activity, and will not be conducting due diligence on the small businesses, all investments should be limited to a maximum of $10,000.00 per natural person, should be limited to only US citizens and limited to only natural persons (no trusts, 401Ks, IRAs, LLCs, Corporations, etc.…).

The finder will not be conducting suitability, liquidity and risk tolerance analyses nor will the finder be responsible for disclosing the true cost of monetization (as discussed above in the section titled "Should a Finder be able to receive a financial interest in an issuer as compensation for its services?" and regarding low priced securities). The accredited investor, because the finder is not registered with FINRA, will not have FINRA arbitration proceedings as an option to recoup lost capital due to fraud or other finder's abuses. These factors increase the risk to the accredited investor. The only clear path to limit the accredited investors risk is to limit the size of the investment to $10,000.00.

Should the Finder be prohibited from engaging in general solicitation as proposed?

Yes.

The solicitation of any investment should be done by a trained and registered professional. Since, the finder will not be submitting marketing materials to FINRA, via 5123 filings, there will be no review of the finders marketing documents. Further, since there will be no archiving mandates for a finder, there will be no documentation available to the SEC should it be necessary to surrender materials via a SEC affidavit. Any SEC investigation into a fraudulent offering or objectionable solicitation by a finder that occurred in the past, would be thwarted.

Should Finders only be able to "find" or solicit for primary offerings?
Yes

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?

This exemptive relief is creating a FINRA and SEC regulatory void in a sector that has historically been fraught with abuses by supervised, registered representatives. The small business sector is and always has been a problem area for regulators. Review the FINRA and SEC actions taken against firms like Stratton Oakmont. Now remove the registration requirements for the soliciting agents and all the rules and regulations that have been put in place since these firms were expelled then forecast what will happen. Without significant limitation on these unregistered and unsupervised finders' activities you will be creating fertile ground for fraud and abuses by unethical finders. Please move forward with caution. There is no reason to rush into creating a class of unrestrained and unsupervised broker dealers.

Should the definition of Finder be limited to natural persons?

Yes.
We would hope that a finder would be a qualified individual with years of business experience, but the finder may be a very different individual then what we would hope for. There are no proposed training or educational hurdles that must be met to be approved as a finder written into the exemptive relief. The finder will not be registered or supervised; leaving the door open for anyone to be a finder, high school students, college students, adults without GEDs and individuals with no training. Some reasonable measure should be taken to prevent the reemergence of the boiler-room call centers whose ownership is masked by a series of shell LLCs. The simplest solution is to limit the definition of a finder to a natural person.

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?

Yes.
The proposed exemption should 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. This will prohibit registered agents from soliciting small businesses as a registered agent, resigning to act as a finder, and then reregistering after the company is funded and they have received finder's fees. Registered agents resigning and reregistering to take advantage of the finders' exemptive relief, would make it difficult for broker dealers to monitor the activities of their registered agents. Not restricting the eligibility of a registered agent from becoming a finder would also allow a registered agent that discovered a suspicious activity, one that would disqualify a business from eligibility as a broker dealer funding target, to resign as a registered agent, fund the red flag business as a finder and avoid the broker dealer having to maintaining records of the transaction.
A 12 month look back, will also stem the flow of registered agents resigning to become unsupervised finders and reduce private placement broker dealer closures. In addition, the previous 12-month registration limitation, a finder commission limit of 2% cash fee with no

securities compensation and a offering threshold set at $2,000.000.00 per quarter will limit the number of placement agent contracts being lost by broker dealers to unregistered finders and would instead create jobs versus trading them from one industry to another.

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

Why or why not?
Being associated with an issuer and receiving transaction-based compensation for funding the same issuer would be a clear conflict of interest.

Are there any other considerations in this regard that the Commission should take into account as it considers the exemptive relief?

Since you do not have to be associated with a broker dealer to take the Series SIE exam, please consider making both Tier I and II finders pass the SIE exam prior to engaging in the activities of a finder and imposing a five-year archiving mandate on finder's emails and marketing materials related to any offering that the finder participates, successful or otherwise.

It is unclear to me, whether the SEC is restricting finders from raising capital for hedge funds and like investment vehicles. If not, then the SEC should consider adding language to prohibit unregistered finders from raising capital for this type of investment vehicle. Since Madoff, the due diligence mandates imposed by FINRA for broker dealers engaged in finding capital for hedge funds are burdensome, but necessary. No one should invest in a hedge fund without his or her investment advisor examining the tenants, activities, and structure of the fund first.