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November 9, 2020

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

Re: Notice of Proposed Exemptive Order Granting Conditional Exemptions from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders (Release No. 34-90112; File No. S7-13-20)

Dear Ms. Countryman:

The following comments are submitted in my individual capacity with respect to the proposal of the Securities and Exchange Commission (the "Commission") to issue an order providing for exemption from broker registration for finders who comply with specified limitations. I have been in discussion with several other individuals and groups who are submitting comments on this proposal but wish to highlight and prioritize what I consider to my principal suggestions.

At the outset I wish to congratulate the Commission and its Staff and to thank them for opening a meaningful dialogue about the nature and role of finders and how they relate to capital formation, especially for small businesses in underserved communities. We all know that this has been a topic of concern for many years and the Commission's proposal is a very welcome breakthrough and a meaningful step in the right direction. My comments below are not intended to diminish the enthusiasm and gratitude of many of us at this significant development.

My comments will be limited to a few key points. There are a number of other issues that are worthy of discussion, but I believe they will be addressed in other comment letters. The views expressed in this letter are designed to enhance the balance between fostering capital formation and investor protection, both of which are legitimate and essential parts of the Commission's mandate.

A. Importance of coordination with states and other regulators.

In my view, the Commission's proposal would risk falling short of its desired goal without active coordination with state securities regulators and, as appropriate, also with the

Financial Industry Regulatory Authority (“FINRA”). A few states have adopted their own exemptions or limited registration regimes for finders, but the vast majority have not. An exemption at the federal level can be a trap for the unwary, who may believe that if they are not subject to broker registration with the Commission they are “home free.” In fact, the multiplicity and lack of uniformity among the states can be enough of a burden to influence a prospective finder to abandon the effort to help issuers raise capital. I am encouraged by anecdotal reports that representatives of the North American Securities Administrators Association and FINRA are now eager to participate with the Commission in finding common ground. This would be a real breakthrough and deserves to be the basis for active engagement.

B. Status of Tier I Finders.

The Commission’s proposal would identify Tier I Finders who would be restricted to natural persons who are involved in only one transaction for a single issuer per year. Although there may be differences of opinion on how to identify a single offering, and some may question whether the requirement that all investors be “accredited” is consistent with providing assistance to the smallest issuers in underserved communities, in my view these individuals would not come within the definition of “broker.” The extreme limitations on their activities in the proposed exemption are consistent with their not being “engaged in the business” of “effecting transactions” in securities.

The advantage of affording them a conditional exemption, rather than treating them as being entirely outside the scope of the Commission’s regulatory authority, is that they can and, in my view, they should be required to file a notice with the Commission and with any states where they are active as finders. This will greatly enhance the transparency of the offering process, provide data to regulators, provide some fee income to the states, tend to exclude ineligible persons (e.g., “bad actors” and non-U.S. finders), and enable regulators to monitor the operation of this process.

In the current proposal, Tier I Finders would not be permitted to have any interaction with prospective investors. Some have questioned whether this is realistic or feasible. However, on the premise that the Tier I Finder would not have any direct communication with the proposed investors, the issuer should be required to communicate to the prospect that the Tier I Finder will be compensated, and on what basis. The issuer should be required to inform the potential investor of any other conflicts of interest that might be material to an investment decision.

In view of the very limited scope of activity permitted for Tier I Finders, I do not object to this category being limited to natural persons.

C. Status of Tier II Finders.

Tier II Finders would be permitted to engage in a wider range and greater number of activities than Tier I. There are numerous possibilities for how to heighten the prospect that their activities will not have an adverse effect on investor protection. This is an area that calls out for a coordinated effort among the Commission, the states, and FINRA. The following are a few substantive points that I suggest the Commission to consider in its approach to this category.

1. Notice. Advance notice to all relevant regulators should be a condition of exemption from full broker regulation.
2. Natural persons. Since Tier II Finders would more clearly fit the definition of “broker” and be engaged in a business, they should be permitted to do so in entities and not limited to acting as natural persons.
3. Non-solicitation. The pending proposal would allow Tier II Finders to interact directly with prospective investors, including arranging and participating in meetings with them. It is not realistic to exclude the notion of a solicitation or recommendation from this kind of contact. The Commission should recognize that there will be at very least an implicit recommendation from the Tier II Finder to the investor.
4. Accredited investors. As noted above, limiting the prospective investors to those who are “accredited” may unduly restrict the access of smaller issuers, seeking relatively small amounts of money, from people in their community. The Commission should consider requiring a limit on the amount of investment, *per capita*, by non-accredited investors.
5. Due diligence. The Commission’s proposal would prohibit a Tier II Finder from engaging in due diligence with respect to the proposed investment. I fail to see the need or desirability of this kind of restriction. Ideally, before the Tier II Finder decides to introduce and issuer to a prospective investor, the Finder should have as much information as is reasonably available about both the terms of the offering and the ability of the investor to understand and afford the investment.
6. Broker “Lite”. Over the years there have been numerous suggestions that finders that would fit the description of Tier II be subject to some form of registration with the Commission, including a simplified form of FINRA membership and state registration.¹ If the Commission, in coordination with the states, chooses to follow that route, as distinguished from an exemptive approach, I urge that the net capital rule, 15c3-1, and related financial recordkeeping, reporting, and independent audit requirements not be imposed. The Commission could consider retaining requirements relating to prevention of fraud and avoidance of conflicts of interest. The Commission could mandate that FINRA adopt rules consistent with this approach, including possible limitations on the level of finder compensation, and provision for inspection.

¹ See, for example, H.R. 3768, 116th Congress, introduced by Mr. Budd, R., N. Carolina.

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In conclusion, I reiterate how welcome it has been for the Commission to take this step in the direction of a more realistic regulatory framework for finders. I am confident that all interested parties remain eager and energized to work with the Commission's Staff in refining the pending proposal to make it a more effective approach to capital formation for small businesses coupled with an appropriate level of investor protection.

Respectfully submitted,

Faith Colish

Cc: Hon. Jay Clayton
Hon. Hester Peirce
Hon. Elad Roseman
Hon. Allison Lee
Hon. Caroline Crenshaw