November 6, 2020

Vanessa Countryman
Secretary
Securities and Exchange Commission
rule-comments@sec.gov

Re: File Number S7-13-20

Dear Ms. Countryman:

Stonehaven, LLC, appreciates the opportunity to comment on the Commission's proposed exemptive order for finders, Release No. 34-90112.

1. Stonehaven, LLC

As a registered broker-dealer, Stonehaven manages a global capital raising FinTech platform whose diverse community of placement agents and investment bankers (Affiliate Partners) strategically connect select investment opportunities with our extensive network of sophisticated investors. Stonehaven supports our Affiliate Partners with a robust broker-dealer infrastructure, our proprietary Nexus SaaS technology, a collaborative ecosystem, a large universe of active mandates, origination capabilities, marketing services, industry data, and industry insights. We are active across many sectors: real estate, private equity, venture capital, private credit, hedge funds, long-only strategies, direct private placements, secondaries, and M&A. Founded in 2001, our platform has over 70 professionals, represents over 90 clients, and is rapidly scaling.

Our Affiliate Partners are independent firms (many of which are sole proprietorships) that have principals who hold a variety of FINRA licenses with and are supervised by Stonehaven. The Affiliate Partners originate their proposed private offering mandates. Stonehaven conducts due diligence on these proposed mandates before permitting the Affiliate Partners to make them available to their investor relationships. The Affiliate Partners bring these offerings to the attention of all types of accredited and/or qualified investors, including high net worth individuals on one end of the spectrum to sovereign wealth funds on the other end of the spectrum. Stonehaven supervises this sales process under applicable SEC and FINRA rules. In the past 19 years we have raised $6.2 billion in capital for private issuers, $840 million in 2020 alone.

2. Summary of Our Comments

The Commission proposes to issue an exemptive order under Sections 15(a)(2) and 36(a)(1) of the Securities Exchange Act to permit natural persons to act as "finders" on behalf of issuers. The order would permit these finders to solicit investments for transaction-based

compensation and to engage in other brokerage-like activities without registering as a broker-dealer. The proposed exemptive order would permit two types of finders, a "Tier I" finder, which could engage in one transaction by a single private issuer within a 12-month period, and a "Tier II" finder that would be permitted to engage in a broad range of core brokerage activities.

Stonehaven opposes the proposed exemption for Tier II Finders because it could harm investors and because there are better alternatives to achieve the purposes of the proposed exemption. We support an exemption for Tier I Finders if done through rulemaking and with certain modifications from the proposal.

3. The Commission Should Not Exempt "Tier II" Finders

The proposal would exempt finders who engage in traditional brokerage activities from the registration requirements of Section 15(a). A Tier II Finder could, for example, engage in at least three activities that the proposing release says are indicators of being a "broker": (i) actively soliciting investors, (ii) engaging in the business of selling securities of multiple issuers, and (iii) receiving commissions.[1]

A. The Proposed Tier II Exemption Could Harm Investors

The proposed exemption would represent a "radical departure from established registration requirements" that would "expand the scope of investor solicitation activities by unregistered and unsupervised agents in private markets."[2] The proposal would allow unregistered finders -- who still would be defined as "brokers" under Section 3(a)(4) of the Securities Exchange Act – to engage in core brokerage activities without having afforded their customers the fundamental protections of the Act and FINRA rules.

I. Tier II Finders Would be Exempt from Important Investor Protections

Under this proposal, Tier II Finders would be exempt from all the protections of the federal securities laws and FINRA rules, other than the inadequate antifraud provisions. For example, they would be exempt from Regulation Best Interest, FINRA's suitability rule, its rules requiring broker-dealer communications to be "fair and balanced," the licensing and continuing education requirements applicable to registered representatives, Commission and FINRA record-keeping requirements, anti-money laundering rules, PCAOB audit requirements, net capital rules, and any requirement to disclose their disciplinary history – all of which apply to broker-dealers. All of these rules play a crucial role in protecting investors which is mission critical for the SEC and FINRA.

[1] *See* 85 Fed. Reg. 64545 (October 13, 2020).

[2] *See* Public Statement of Commissioner Caroline A. Crenshaw 1 (October 7, 2020) ("Crenshaw Statement").

Tier II Finders would not even be expected to comply with just and equitable principles of trade. They would engage in a commission sales business unsupervised by any regulated entity and would not be subject to regular examination by any regulatory authority. Tier II Finders would not have to hire a Chief Compliance Officer or attorneys to ensure that they comply with any regulation. They would not have to pay fees to FINRA and SIPC, respond to regulatory audits, or respond to FINRA requests under Rule 8210 for documentation and testimony in connection with an examination or investigation. This framework will attract nefarious actors because of the lure of personal gain coupled with the absence of an effective regulatory framework.

Like many other broker-dealers, Stonehaven just concluded months of analysis and application of the principles of Regulation Best Interest. As the Commission is aware, Regulation Best Interest treats even sophisticated individuals as "retail customers." There is simply no reason why Tier II Finders engaged in core broker-dealer activities should be exempted from similar requirements, or why their customers should be exposed to conflicted service that is not in their best interest.

II. Finders Operate in a "Gray Market"

The proposed exemption for Tier II Finders is most disconcerting because, as the release acknowledges and Commissioner Crenshaw emphasized, finders operate in "a gray market" that is "prone to fraud."[3] If the Commission were to approve the proposed exemptive order, Tier II Finders could continue to pursue their fraudulent activities, unseen by any regulator, which would likely damage investors and investor confidence in the private markets which would hurt the industry and ultimately stifle small business growth which, ironically, is exactly what the proposed rule set is supposed to facilitate. The proposal would not even require finders to notify the Commission that they intend to operate under the proposed exemptive order. Therefore, the Commission would have no way of knowing whether Tier II Finders are operating within the limitations of the exemptive order. The unintended consequences of this proposed framework would also likely cause a significant volume of litigation and arbitration costing investors and small private issuers immeasurable sums. As Commissioner Crenshaw so eloquently said:

> Not only would Finders be exempt from basic sales practice rules under the proposed approach, they would not be required to register with the SEC or FINRA, and they would not need to notify the SEC of their intent to rely on this relief. Moving forward, Finders would not be subject to periodic inspections or examinations, nor would they be required to maintain records of their activities. In fact, we will have no idea if they are complying with any of the conditions set forth in the Notice. Further, while the Notice provides a clear statement of what activities Finders would be *permitted* to engage in, it is does not explain what, if any, activities are actually *prohibited*, meaning that regulatory uncertainty and enforcement challenges in this space are likely to remain.[4]

[3] *See* 85 Fed. Reg. at 64543; Crenshaw Statement at 1.

[4] Crenshaw Statement at 2 (emphasis retained).

III. The Proposal Would Open the Door to Other, Non-Exempt Finders

The proposed exemption would constitute a nonexclusive safe harbor and the release repeatedly states that "no presumption shall arise that a person has violated Section 15(a) of the Exchange Act if such person is not within the terms of the proposed exemption."[5] The Commission should expect finders, with the assistance of shrewd counsel, to avoid the federal securities regulations and FINRA rules by complying with *some* of the conditions of the exemptive order without abiding by *all* of them. Even the minimal restrictions that the order would impose upon the core brokerage activities of a Tier II Finder could be flouted.

For example, as Commissioner Lee said, to earn a lucrative commission a Tier II Finder might engage in the business of finding investors, teaming up with issuers, presenting offering materials, and singing the praises of the proposed investment. To avoid registration, the finder could merely "refrain from concluding the presentation with the words 'you should invest.'"[6] The Commission would be hard-pressed to bring a Section 15(a) charge against that finder.

B. More Effective Alternatives to Achieve the Stated Purpose

The Commission's stated purpose for this exemptive order is to enable finders to "identify and … solicit potential investors" and "bridg[e] the gap between small businesses that need capital and investors who are interested in supporting emerging enterprises."[7] Of course, the proposal would not limit the amount of an private issuer's valuation or the total offering amount. Unregistered finders would be permitted to engage in core brokerage activities on behalf of not only small private issuers, but medium and large ones, too.

As Commissioner Crenshaw and Commissioner Lee stated, the Commission's release presents no data to suggest that an exemption is necessary to improve small business access to capital.[8] By proposing an exemptive order rather than engaging in rulemaking, the Commission avoids the necessity, and quite frankly, the responsibility, to conduct an economic analysis of the need for this relief, furnish evidence of any need to "bridge the gap" between small business and capital raisers, or justify this radical departure from our 66 year old tradition of broker-dealer regulation.

I. Stonehaven and Other Broker-Dealers Provide an Easy On-Ramp for Capital Raisers

The proposed exemptive order is unnecessary because in today's economy a better alternative already exists. A finder who wishes in good faith to raise capital for small business and serve her investor relationships can do so without starting a broker-dealer. Platforms like Stonehaven

[5] *See, e.g.,* 85 Fed. Reg. at 64546.
[6] Public Statement of Commissioner Allison Herren Lee 2 (October 7, 2020) {"Lee Statement").
[7] 85 Fed. Reg. at 64543.
[8] *See* Crenshaw Statement at 1; Lee Statement at 2.

already provide a streamlined on-ramp for independent capital raisers to become licensed registered representatives in a cost-effective manner, and to operate under supervision and with all the investor protections afforded by the Securities Exchange Act and FINRA rules. Stonehaven and other broker-dealers provider capital raisers with legal, due diligence, and accounting support. We furnish them with productivity-enhancing technology and marketing insights. According to FINRA, 39,250 people became registered representatives in 2019, after taking the proper licensing examinations.[9]

Finders typically have only a few clients and will pitch investments according to the commissions that they can earn. This demonstrates an inherent conflict of interest which will ultimately hurt investors and private issuers alike. Through platforms such as ours, capital raisers can develop more high-quality investor relationships and have access to a larger product platform. We require our Affiliate Partners, unlike a finder, to source offerings that are appropriate for their investor relationships and to be transparent and communicate with their investor relationships and the private issuers.

Because the barriers to entering the regulated broker-dealer business are so low and benefits of this framework to investor protections are so high, there is no reason for a Tier II Finder to operate outside the investor protections that the Commission and FINRA afford.

II. The Commission Also Should Reduce Burdens on Capital Acquisition Brokers

If the Commission nevertheless believes that more needs to be done, then another alternative to achieve the Commission's purpose would be to remove unnecessary regulatory barriers to registration as a "capital acquisition broker" as defined by FINRA rules. FINRA's CAB rulebook eliminated unnecessary regulation of limited purpose broker-dealers that help small businesses raise capital and fosters the very purpose of the proposal, to help small businesses raise capital. As of 2018 there were only 56 CABs. The barriers to registration as a CAB lie outside of FINRA's control. Finders who consider becoming CABs choose not to because of unnecessary barriers such as anti-money laundering, SIPC, net capital and PCAOB audit requirements.

The CAB option might never be as cost effective to a finder as becoming associated with a firm like Stonehaven. Nevertheless, removal of these unnecessary burdens would provide another alternative to the proposed Tier II exemption.

4. Through Rulemaking, The Commission Should Exempt Tier I Finders, with Modifications

[9] Other broker-dealers in this space include Compass Securities Corporation, GT Securities, BA Securities LLC, Frontier Solutions, LLC, Chatsworth Securities LLC, Silver Leaf Partners, LLC, Old City Securities, LLC, Pickwick Capital Partners, LLC, Gallatin Capital LLC, Hollister Associates, LLC, and March Capital Corporation.

Stonehaven supports a rulemaking proceeding in which the Commission would consider an exemption for Tier I Finders. The Commission should only engage in a rulemaking proceeding, and not issue an exemptive order, for two reasons. First, a rulemaking proceeding ensures that the Commission will develop data concerning the state of the private markets, how finders operate there, and whether there is a need for any relief. This process should provide valuable intelligence which should increase the precision of the analysis and therefore the application of the rulemaking.

Second, the Commission's no-action letters that provided relief to finders present a wide variety of factual situations that have caused confusion. Only through a rulemaking proceeding can the Commission engage in a methodical analysis of these positions to derive a proposed exemption that will ensure that its scope is consistent with the Securities Exchange Act and that Tier I customers are protected from fraud and abuse.

In such a rulemaking proceeding the Commission should consider the following modifications to the Tier I proposal:

a. Tier I Finders should be limited to the activities in the proposed exemptive order, only providing contact information of potential, accredited investors in connection with one capital raising transaction by a single issuer within a 12-month period. As proposed, Tier I Finders should have no contact with potential investors about any issuer.[10]
b. In addition to the proposed prohibition on allowing a registered representative to serve as a finder, no person who had held a registered representative license in the previous 12 months should be permitted to serve as a Tier I Finder. This prohibition would ensure that registered representatives do not drop their licenses to engage in this unregulated activity.
c. Tier I Finders should be required to provide written notice to the Commission that they are operating as finder for a specific private issuer which should be identified as well *before* the completion of a single permitted transaction per issuer. This requirement would ensure that the Commission is aware of finders who intend to qualify for the exemption and would enable the Commission to request information from those finders to verify that they are complying with the terms of the exemption.

d. All the proposed limitations on private issuers should apply. In addition, to ensure that Tier I Finders are "bridging the gap" with small businesses, they should be permitted to raise only $5 million in any offering for a private company issuer – not an asset management firm or a commingled investment fund -- with a reasonably derived valuation of less than $50 million.

We are confident that modifications such as these, well considered in a thorough rulemaking process, would clarify application of the registration requirements to finders while protecting the investing public.

[10] 85 Fed. Reg. at 64548.

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Stonehaven would like to thank Mr. Tom Selman, CFA, former Executive Vice President, Regulatory Policy and Legal Compliance Officer at FINRA, for his sage insights and guidance regarding this response letter.

Stonehaven appreciates the opportunity to provide our comments on the proposed exemptive order. We are prepared to answer any questions that the Commission or its staff might have concerning our comments.

Sincerely,

/s/ David T. Frank

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David T. Frank, CFA
CEO & Managing Partner
Stonehaven, LLC