November 10, 2020

VIA ELECTRONIC SUBMISSION: RULE-COMMENTS@SEC.GOV

Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE Washington, DC 20549-1090

Re: File Number S7-13-20

Dear Ms. Countryman:

We appreciate the opportunity to submit comments to the U.S. Securities and Exchange Commission (the "**SEC**") on the proposed exemptive order referenced above, entitled 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, Exchange Act Release No. 34-90112, 85 Fed. Reg. 64,542 (Oct. 13, 2020) (the "**Proposed Order**").

In our law practice, we regularly represent startup technology entrepreneurs across a wide spectrum of industries, including medical device and healthcare services, data privacy and security, SaaS offerings and wind, solar and other renewable energy projects. A common theme we hear from these types of clients is the dearth of very early-stage equity investment capital and the difficulty of connecting to prospective investors, local or out of market. They tell us that the current COVID environment has only made fundraising more difficult with the lack of in-person opportunities to meet with investors.

We also represent a variety of individuals and firms who hold themselves out as "finders" of equity capital for early-stage enterprises, but are not registered as brokers or dealers under either federal or state laws. Some of these finders are retired entrepreneurs, having been through the fundraising process for their own companies, and others are former financial industry regulated participants.

Despite current law and SEC interpretations, we find that, after trying to raise capital on their own, a fair number of young companies that are our clients turn to unregistered finders to assist in developing fundraising materials and strategies, making introductions to and participating in presentations for prospective investors and collecting subscription agreements and investment

checks. Finders that we have seen our clients work with universally limit themselves to cultivating solely accredited investors (or those believed to be such) as investment prospects. While we understand the potential for fraud with unregistered finders, our team's many collective years of experience in representing thousands of technology entrepreneurs has yet to yield any examples of investor demands for rescission of securities purchases on account of a finder's fundraising activities.

In this light, we offer the following comments to the Proposed Order:

1. **Difference between Tier I and Tier II Finders**. We believe that, as a practical matter, Tier I provides only limited assistance for early-stage entrepreneurs. First, it would be the rare prospective finder who would open his or her network of potential investor contacts to but a single company for one fundraising transaction in any 12-month period. Good finders, in our experience, must develop relationships with multiple investors over an extended period of time. They learn the types of industries and deals that are attractive to these investors, and they would only want to take the time to help any particular company if they can leverage their relationships on more than just a single occasion. To a finder, this is a business and the finder must make a return on the finder's own investment in building a database of investor prospects which clearly cannot be recouped in a one-time, one-company effort.

Second, we think that allowing a Tier I finder only to provide contact information, while helpful, misses the whole point of having an intermediary involved. We find in our own law practice that if we introduce a client to a prospective investor, that client has a much better chance of getting the investor's attention than if the company merely reaches out on its own. Many startup entrepreneurs are not skilled at fundraising and presentations, and the assistance of a third party that is comfortable in this environment dramatically increases the probability that an investor will seriously consider an investment opportunity.

In any case, we welcome the Tier I finder classification for the rare one-off situation that even under current law would not be permissible.

2. **Scope of Tier II Finders**. We think that the requirement that a qualifying finder be a natural person does not comport with the business world. We encourage all our clients to do business through some entity, whether it is a corporation or limited liability company. Solo practitioners of law and other professions rarely operate in today's world as unincorporated businesses. Consistent with this, we find that almost all finders that we've dealt with conduct their

activities through some business entity, even if only to limit personal liability for general contractual matters. Therefore, we recommend that the Tier II exemption allow finders to continue to function through any form of business entity.

We note that under the current SEC proposal, Tier II finders are not allowed to collect investor signatures on subscription agreements and checks. We see finders engaging in this activity fairly regularly and have never observed any fraudulent outcome. The SEC could require that any checks for an investment solicited by a finder are made out directly to the company, and not to the finder. Similarly, the SEC could require wire transfers to be made directly to the company and not through a finder. By analogy, Rule 206(4)-2(d), applicable to investment advisers, provides that "custody" of client funds and securities excludes checks drawn by clients and made payable to third parties. We think our suggested approach for finders provides appropriate protection for private offering investors while allowing companies to outsource the final administrative aspects of fundraising to their engaged finder professionals.

We also observe that the Tier II proposal prohibits finders from engaging in public solicitation. We believe that for all of the reasons that the SEC has already determined that companies themselves can, consistent with investor protection, publicly solicit for private investment via Rule 506(c), finders should be able to do the same on behalf of companies that are eligible for Rule 506(c). We find no practical reason to limit the manner that a company may court investor prospects simply because a finder is doing the solicitation on behalf of a company, rather than its officers doing so.

You have also asked about finders receiving transaction-based compensation in the form of equity securities of the companies for whom they perform services. We think it is advantageous for companies to have this option. Cash is a precious commodity for these early-stage enterprises, and if they can negotiate a finder's services in exchange for equity, in whole or in part, the company can preserve more of the cash raised to build the business, which also favors the investors.

3. **Federal Preemption**. We believe that the proposed exemption will be rendered useless for many companies if the SEC does not define the securities sold with the assistance of a compliant finder as "covered securities" under NSMIA. In Minnesota, we are fortunate in that Minn. Stat. Section 80A.56, subd. (b)(1)(C) exempts broker-dealers without a place of business in the state if transactions in Minnesota are effected only with accredited investors. But, even the Minnesota law won't help a finder in this state connecting with investors in the many other states

that do prohibit finder activities. The only true solution to the finder problem identified by the SEC is to have a uniform, national approach.

We are gratified that the SEC has finally taken on this vexing dilemma for young companies head-on. We think that any relief is better than the current environment, but as we describe above, we believe that the SEC can improve the proposed rule.

Very truly yours,

Jeffrey C. Robbins Todd A. Taylor David K. Peteler