November 11, 2020

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

Re: File Number S7-13-20. ***Response from The Third-Party Marketers Association regarding exemptive order for finders, Release No. 34-90112***

Dear Ms. Countryman.

I am writing to you today on behalf of the Third-Party Marketer's Association ("3PM" or "Association") to express the thoughts and concerns of our association's members based on the Commission's proposed exemptive order for finders, Release No. 34-90112. While it is our goal to respond to requests for comments in a manner beneficial to the majority of 3PM's members, it should be noted that the views of the commentators involved in preparing this response may not be representative of the views of the entirety of the 3PM membership or our industry group in general.

Background

The Third-Party Marketers Association ("3PM") began in 1999 and today brings together a global constituency of marketers, managers, issuers and industry product and service providers.

3PM was formed to maintain a standard of excellence in the industry and to share information and ideas among independent sales and marketing firms. The Association helps to cultivate relationships and business opportunities among its members and works to provide them with information and ongoing education about the investment management industry. 3PM's goal is to enhance our profession's standards, integrity, and business practices, which is accomplished by advancing ongoing agendas in the areas of regulation and compliance as well as adherence to the highest standards and best practices utilized throughout the financial services industry.

3PM has worked tirelessly throughout its history, and particularly over the past decade, to preserve the foundation of our industry. Our efforts began with the SEC Proposal back in 2009 (File Number S7-18-09) that called for a general ban on the use of legitimate Placement Agents and other third-party

intermediaries. We fought for our industry and the contributions our members make to capital raising and formation.

When confusion arose as to who would be required to register as a Municipal Advisor (MA), we spent time with members of the SEC to better understand the rules governing MA registration and how help our members better interpret the rules.

Our efforts continued when the MSRB took over responsibility for MAs and enacted an entire regulatory scheme devoted to the oversight of third-party marketers working with public entities. We were there to share our voice about the duplicative regulatory oversight our industry had been subjected to. When a registration category was not sufficient, the SEC called on the MSRB to institute new qualification exams and oversight requirements. Not only had 3PM submitted a comment letter to the MSRB regarding the new qualifications and regulation but as a group, 3PM has participated on several calls with the MSRB to provide a better understanding of how our industry works and how certain rule proposals might impact our members.

In addition, our Association has also worked closely with FINRA regarding the regulatory burden faced by our members help to provide important input to FINRA on the CAB ruleset. FINRA did what it could to help streamline the rules under their control to relieve some of the regulatory burden faced by small firms without compromising any investor protections. When asked what else could be done to approve the ruleset, the industry commented back about relief that could be provided by the SEC in areas such as AML, net capital, PCAOB Audits, SIPC and other areas the SEC did not want to spend the time on.

Given all of this, to say we were a bit surprised by your proposal and the potentially widespread consequences it would have on investors and the industry as a whole, would be a massive understatement.

Furthermore, it is our observation and belief that over the past several years, rules and regulations aimed at protecting individual investors have been the priority of the Commission. Of particular note are the PATRIOT Act, Reg S-P and most recently Reg BI. We believe the proposed exemptions for individuals acting as finders is a significant departure from the direction of the past by erasing layers of regulation.

Comments

The proposed exemption would provide non-exclusive safe harbor from broker registration. The safe harbor is intended to provide clarity with respect to the ability of a Finder to engage in certain activities without being required to register as a broker under Section 15(a). Furthermore, the Commission is proposing two classes of Finders, Tier I and Tier II, with the major differentiating provision being that Tier II Finders are permitted to "engage in solicitation-related activities on behalf of an issuer."

We are satisfied with the general parameter proposed for Tier I. As ''introducers" doing no more than providing contact information to issuers, we find the essential premise to be workable. That said,

we believe the safe harbor does not account for conflicting state regulations, especially since it is the states, and not the SEC that may require individual registration for the activities described.

Tier II allows Finders to "engage in solicitation-related activities on behalf of an issuer." Under the proposal as such, we believe the Tier II safe harbor falls short precisely at the area where protections are needed. The obligations of a financial professional at the point of solicitation are substantial and provide important protections. We disagree that individuals whose role would include pre-determinations of suitability should be outside regulation and licensing, and we strongly encourage the SEC to rethink or remove this Tier from the safe harbor. Importantly, although most 3pms provide a more robust offering of services, some 3PMs could be classified as Tier II Finder allowing as many as 450 firms, currently registered as BDs or CABs, to fly below the regulatory radar.

Has the SEC considered that this proposal could create a mass movement in the industry towards deregistration? If so, does the SEC genuinely expect that such departure from regulation will result in stronger investor protection? The regulated industry deserves answers to these questions.

Our industry and specifically our members have worked diligently to acquire and maintain licensing, registration and to comply with regulations we believed were designed for the furtherance of investor protections. These investor protections have helped to further legitimize our industry and differentiate registered participants from the bad actors, many of whom are unregistered.

While the new regulatory scheme for third party marketers has increased the number of registered participants in the market, we know that there is still a group of unregistered persons who have dodged regulatory oversight in violation of existing laws, rules and regulation. Basically, the SEC's subject proposal is legitimizing those who have avoided registration and potentially disadvantaging those industry participants who have followed the rules.

While registration does have some benefits for small firms, duplicative over-regulation also creates an unlevel playing field between the registered and unregistered. There is no doubt that registration requirements are burdensome and require registered professionals to focus first on the heavy compliance burdens registration requires and second on their capital raising efforts. Under the SEC proposal Tier II individuals could skip ahead to the capital raising without the burden of compliance.

If the SEC implements such a proposal, does the Commission expect corresponding rules and regulations at the state and federal level to be similarly relaxed for broker-dealers? For instance, can 3PMs who do not open brokerage accounts and who only act as intermediaries be relieved of rules relevant to solicitations? If not, the Commission's actions would move our industry further from regulatory harmonization and would add to the confusion and "gray matter" that exists in the industry.

3PM agrees with the concerns that have been raised that "identifying potential investors is one of the most difficult challenges for small business trying to raise capital." While this is true, this is exactly

why barriers to entry need to exist. Relaxing regulation in this regard will undoubtedly create the unintended consequence of further injuring the exact investors the SEC is charged with protecting.

This proposal would allow a Finder to communicate with accredited investors who are sophisticated. We question whether the Commission believes that an inexperienced and untrained Finder is adequately equipped to gauge the sophistication of an investor. Upon scrutiny, say by a regulator examining an issuer, a BD or by the investor's counsel, will the Finder be responsible for substantiating his or her determination?

In addition to our comments above we urge the SEC to provide guidance on the following topics:

1. How are individual investors better served by this proposal?

2. Will Finders be required to have some minimum qualifications if they are to interact with accredited investors (now deemed "retail investors" under Regulation BI)? Will they be required to demonstrate sophistication adequate to meet a reasonable professional standard? Will some type of continuing education be required? Who will be responsible for erroneous information given to investors by Finders? Will the SEC establish a disclosure portal as it has for "exempt reporting advisors" for the new category of "exempt reporting solicitors?"

3. How will a Finder's discussions with potential investors be monitored to ensure there is no recommendation or misinformation provided?

4. Will a Finder be required to conduct any type of due diligence on the issues and issuers they work with? If not, is it now the responsibility of the accredited investor to take on the full-burden of due-diligence?

5. What are the effects of shifting the burden of "solicitation" from the Finder to the Issuer? Will the Issuer be required to disclose its conflict of interest? Will the issuer now have to comply with Reg BI?

6. To what degree will Tier II finders be required to comply with:
    a. Suitability requirements
    b. Privacy requirements
    c. Cyber and other information security requirements
    d. Disclosure obligations such as those required under Form U4 and Regulation BI
    e. Record-keeping requirements in general
    f. Point of sale/subscription disclosures, acknowledgements, and related requirements

7. Does the SEC envision including disqualifications such as liens, bankruptcy, compromise with creditors, customer complaints, regulatory actions, and related disclosure events?

8. How does the SEC intend to monitor the reasonableness of Finder fees, recommendations that exceed concentration limits or other investor considerations?

9. Without provision of a written disclosure document, how will a Finder evidence that the pertinent information in the disclosure was discussed. Does the belief that if you didn't document it, you didn't do it no longer hold? Will this standard be allowed for other industry participants?

10. How will the SEC ensure that individuals electing the Tier II safe harbor will not run afoul of state or FINRA requirements for licensure or registration, especially if there is no way to track those individuals operating as Finders?

11. When does the SEC anticipate that it will enable entities to operate under the Tier II safe harbor?

While we appreciate the SEC's attempt to streamline regulation, make it less confusing to the industry and enhance the ability of small firms to raise capital, we question why the Commission has not worked with other regulators, namely FINRA, who has been working on this express issue for the past several years. FINRA has instituted the CAB rule set which was specifically designed to help alleviate the regulatory burden placed on capital raisers. While the FINRA ruleset does have its advantages, most industry participants believe that the relief does not go far enough. Further, FINRA has explained that further relief under the CAB rules is not possible due to SEC guardrails, ironic under the current proposal.

3PM believes that the proposal will result in unintended consequences to the very investors the SEC is charged with protecting. 3PM is disappointed that the SEC's proposal release does little to present a balanced discussion that includes a thorough discussion of the potential consequences, and how the Commission plans to address them.

For this reason, while 3PM is thankful for the opportunity to submit its comments regarding the named proposal, it strongly encourages the Commission to provide answers and further guidance to the industry.

Please feel free to reach out to me at [redacted] or by email at [redacted] should you have further questions regarding our comments.

Regards,

<<Donna DiMaria>>

Donna DiMaria
Third Party Marketers Association
Chairwoman of the Board and Chair of the Regulatory Committee