



November 12, 2020

Via Electronic Mail
Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: 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

Dear Ms. Countryman,

The Americans for Financial Reform Education Fund (“AFR”) appreciates the opportunity to comment on the above referenced Notice of Proposed Exemptive Order (the “Notice” or “Proposal) concerning the Security and Exchange Commission’s (“SEC” or “Commission”) proposed exemption from broker dealer registration for “finders”. Members of AFR Education Fund include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.¹

AFR strongly opposes this Proposal. To state the obvious, the broker-dealer registration regime exists for a reason. By creating a blanket exemption for a broadly defined group of “finders” to effectively act as solicitors and brokers in private investment markets without being subject to any of the requirements on registered broker-dealers as regards disclosure, qualifications, obligations to customers, pricing, record-keeping, business conduct, financial resources, or compliance with FINRA rules, the Commission would abrogate its responsibilities to protect investors and to maintain fair and orderly markets.

It is true that this exemption would only apply to private/exempt offerings sold to accredited investors. However, as AFR and many of our member organizations have repeatedly pointed out, the Commission’s policies have permitted the private offering market and the pool of accredited investors to expand to the point where, rather than being a narrow and specialized exemption to core securities rules, they are central to the markets and annually account for more than twice the

¹ A list of AFR Education Fund member organizations is available at <https://ourfinancialsecurity.org/about/coalition-members/>

capital raised in the entire public market.² The Commission’s recent actions -- the August rule on accredited investors that failed to address the increasingly outmoded wealth and income thresholds in the definition, and the November rule greatly expanding the ability of firms to raise large amounts of capital through exempt securities offerings -- will super-charge this development and make private capital markets ever more central to the American economy.³

In this Proposal the Commission caps off these changes by permitting a whole new class of individuals to act as effectively solicitors and dealers in these expanded private markets without being properly regulated as such. (This is especially applicable to the “Tier 2” finders, who will be able to actively solicit investors and actively pitch investments for multiple transactions a year). Thus, if the current Commission has its way, a majority share of American capital markets in the coming years could consist of offerings exempt from core disclosure and transparency obligations, being sold to investors who are not subject to key investor protections, by salespersons who are not regulated as brokers.

The economic justification offered in the Proposal for this radical deregulation is completely inadequate. That justification rests on the assumption that radical deregulation of capital raising will create capital formation benefits, particularly for small businesses. But as pointed out by the Consumer Federation of America in their comment, deregulation of intermediaries that potentially enables fraud and deceit of both investors and businesses who seek capital can easily have the effect of diverting capital from productive and sustainable businesses to enrich a dishonest intermediary or other fraudulent enterprise. This possibility is not seriously analyzed in the Proposal. Not only is the core assumption of capital formation benefits not proven or adequately justified in the Notice, it is not balanced against other obligations of the SEC such as the protection of investors or the maintenance of fair and honest markets.

The North American Securities Administrators Association (NASAA), representing state securities regulators who are on the front lines of the fight against securities fraud, warn directly in their letter on this Proposal that the combination of exempt offerings sold by unlicensed and unregulated intermediaries presents a grave risk to investors and to capital formation by the diversion of funds into fraudulent schemes. As NASAA points out, the massive Woodbridge private placement fraud uncovered this year, which resulted in \$1.3 billion in losses to thousands of investors (most of them retirees), was led by the same type of unlicensed “finders” whose activities would be deregulated under this Proposal. The Commission should heed their warning and withdraw this unjustified proposal.

Should the SEC wish to craft a new set of regulations that are less stringent than the current broker-dealer regime for specific and limited types of intermediation in the capital markets, it should do so through a formal rulemaking and justify each relaxation in regulation based on concrete evidence. That evidence should lay out, in each case, the reasons why existing

² “Letter on Private Offering Rules”, Americans for Financial Reform Education Fund, June 2020, available at <https://bit.ly/38E51YI> ; “Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets”, Proposed Rule, Rel. No. 33-10763, 8 (Mar. 4, 2020) (Proposing Release).

³ “Amending the Accredited Investor Definition”, Final Rule, Rel. No. 33-10824, 143 (Aug. 26, 2020) (Adopting Release); “Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets”, Final Rule, Release No. 33-10884, 209 (Nov. 2, 2020) (Adopting Release)

regulations are not necessary to protect investors and ensure honest dealing that leads to sustainable capital formation. The blanket exemptions proposed for finders in this Proposal are neither appropriately limited nor appropriately justified and should be withdrawn.

We appreciate your consideration of this important matter. If you have questions, please contact Marcus Stanley, AFR's Policy Director, at [REDACTED].

Sincerely,

Americans for Financial Reform Education Fund