November 12, 2020

Vanessa A. Countryman, Secretary
U.S. Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549
Sent via email: rule-comments@sec.gov

RE: Release NO. 34-90112
File No. S7-13-20

Dear Ms. Countryman:

I appreciate the opportunity to comment on the Proposed Exemptive Order Granting Conditional Exemption from Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders. I am in opposition of this proposal and believe if passed we will see increased fraud and harmed investors in the over the counter private placement market.

- I have been in the securities industry for over fifty years and am proud to have a long history servicing the private placement market. Under the rules of FINRA, we service issuers and investors with proper qualifications, procedures, recordkeeping, and supervision. We are subject to examination and operate under a mandatory FINRA arbitration program. Each obligation was designed to prevent fraud and misconduct. A critical function we play is diligence – both reasonable basis and customer-specific suitability. The private placement intermediary industry and all the work by firms and FINRA should not be disposed of – this proposal has the potential to do just that.

- Has the staff considered that for the past fifteen years, private placements have been a regulatory focus? Broker-dealers have been put out of business because of investor loss in private placements. Broker-dealers have removed accredited private placement offerings from their suite of services due to regulatory attention by the SEC and FINRA. Increased rules put undue burden on broker-dealers who engage in private placements. Take for example the just filed SR-FINRA-2020-038, proposed amendments to FINRA Rules 5122 and 5123[(1)]. How in one hand can regulation continue to increase on private placement solicitation and in the other a blanket exemption from registration all together is contemplated?

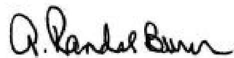
- In just August of this year, the SEC published "*Misconduct and Fraud in Unregistered Offerings: An Empirical Analysis of Select SEC Enforcement Actions*" [(2)] This analysis states on page 24 that "A higher degree of involvement of unregistered or unlicensed intermediaries in offerings involving possible fraud or misconduct suggests that investors should be wary of unregistered and unlicensed intermediaries." Has this evidence been discounted?

(1) https://www.finra.org/rules-guidance/rule-filings/sr-finra-2020-038
(2) https://www.sec.gov/files/Misconduct%20And%20Fraud%20In%20Unregistered%20Offerings.pdf

- The SEC should not consider codifying the 2014 M&A No Action Letter. Legislation was introduced in congress but has never passed the Senate – why would the SEC sidestep the legislative process? Organizations like SIFMA and Americans for Financial Reform have repeatedly gone on the record in opposition. An M&A exemption would expose small business owners to unnecessary risk without any meaningful benefit. FINRA member firms have long helped business owners successfully retire through complex change of ownership transactions involving securities. M&A advisors are relied on for structuring and negotiating complex and often large securities transactions, preparation of all sales material, performing independent analysis of the proposed sale, leading extensive due diligence activities and providing advice as to the valuation or financial advisability of the transaction – many that contain multiple securities components. M&A brokers work under the inherent conflict of transaction-based compensation. A barrier to entry, transparency and oversight is critical to maintain the integrity of this important function. There are significant numbers of properly registered M&A professionals at broker-dealers large and small who service M&A – it makes no sense for the industry to encourage such professionals to deregister and move to conduct such an important role without regulation or oversight.

I understand that there are petitioners who do not want to be registered, and issuers who want to pay anyone and everyone to sell their deals. However, the markets are working. A page from FINRA's website dated July 01, 2015 states that "the market for private placements is significant. Last year, U.S. private placements raised $56 billion, according to data compiled by Ernst & Young. Over the same time period, IPOs raised $85 billion." (3) The proposal as written, both regarding finders and M&A, is a solution for a non-problem. If anything, the SEC should continue to have confidence in those firms who have registered and their licensed professionals. Allowing some bridge between finders and licensed intermediaries may be beneficial to all. Moving forward with the finder's proposal in its current form though will cause great risk to accredited investors of private placements, as well as potential devastating effects on the private placement intermediary industry as a whole and FINRA membership – especially small firms.

Sincerely,



A Randal Burch
Owner, Burch & Company, Inc.

(3) https://www.finra.org/investors/insights/private-placements-explained