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November 12, 2020

VIA EMAIL to rule-comments@sec.gov

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

RE: File No. S7-13-20: 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:

Thank you for the opportunity to provide comments in response to the 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 published in the Federal Register on October 13, 2020 (the “Proposed Exemptive Order”). The Proposed Exemptive Order will allow natural persons to act as “finders” under certain circumstances without being required to register as a broker-dealer under Section 15 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Consistent with its purpose, the Proposed Exemptive Order will provide much sought after clarity with respect to individuals participating in limited roles, such as the identification of potential purchasers, with respect to capital raising transactions.

Comments

The Proposed Exemptive Order is intended to be narrowly-tailored to facilitate and relieve burdens on the identification of potential investors, while at the same time preserving appropriate investor protections. This balance is achieved by placing limitations on the scope of instances in which individuals will qualify as Tier I and Tier II Finders. Among these limitations is that “the Finder is not an associated person of a broker-dealer.” The explanation provided in connection with this limitation in the Proposed Exemptive Order is that there is a potential for investor confusion and abusive sales tactics when the Finder is also an associated person of a

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broker-dealer and that the Proposed Exemptive Order is not necessary as such associated persons are already regulated.

The Proposed Exemptive Order defines an “associated person of a broker-dealer” by reference to Section 3(a)(18) of the Exchange Act, which provides that a “person associated with a broker or dealer” or “associated person of a broker or dealer” is defined as:

“any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, **or under common control with** such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 78o(b) of this title (other than paragraph (6) thereof).” (Emphasis added).

This is an expansive definition and includes any individual who, either directly or indirectly, controls, is controlled by, or is under common control with, a registered broker-dealer. The result of this expansive definition is that individuals who are employed by an entity which is under common control with (but is not itself) a registered broker-dealer would be ineligible to rely on the Proposed Exemptive Order. For instance, an individual could be employed by a bank or insurance company that does not have an affiliated broker-dealer. In such case the individual would be entitled to rely on the Proposed Exemptive Order to act as a finder. However, a second individual could be employed in the exact same role with a different bank or insurance company that is under common control with a registered broker-dealer. In this case, the second individual would not be permitted to rely on the Proposed Exemptive Order. The fact that the second individual is precluded from relying on the Proposed Exemptive Order does not appear to be the desired result given the explanation provided by the Securities and Exchange Commission (“SEC”) in the Proposed Exemptive Order.

We note that the definition of “associated person” used by the Financial Industry Regulatory Authority (“FINRA”) is slightly different than the 3(a)(18) definition. FINRA Rule 1011(b) defines the term “associated person” as:

(1) a natural person registered under FINRA rules; or (2) a sole proprietor, or any partner, officer, director, branch manager of the Applicant, or any person occupying a similar status or performing similar functions; (3) any company, government or political subdivision or agency or instrumentality of a government controlled by or controlling the Applicant; (4) any employee of the Applicant, except any person whose functions are solely clerical or ministerial; (5) **any person directly or indirectly controlling the Applicant whether or not such person is registered or exempt from registration under the FINRA By-Laws or FINRA rules**; (6) any person engaged in investment banking or securities business controlled directly or indirectly by the Applicant whether such person is registered or exempt from registration under the FINRA By-Laws or

FINRA rules; or (7) any person who will be or is anticipated to be a person described in (1) through (6) above. (Emphasis added)

Notably, the FINRA definition of “associated person.” covers most of the same individuals as the 3(a)(18) definition, but it does not include someone simply based on that individual being under common control with a registered broker-dealer. In considering the explanation offered by the SEC in the Proposed Exemptive Order with respect to the limitation that a Finder may not be an associated person of a broker-dealer and rely on the Proposed Exemptive Order, it appears that the FINRA Rule 1011(b) definition would address the concerns expressed with regard to investor protection. The FINRA Rule 1011(b) definition would have the added benefit of expanding the scope of the individuals who could rely on the Proposed Exemptive Order to include those who may otherwise be restricted from relying on the Proposed Exemptive Order simply because they are “under common control with” a registered broker-dealer, thereby increasing the potential to facilitate capital raising activity.

Recommendations

Consistent with the SEC’s concurrent missions of facilitating capital formation and investor protection, we believe that it would be appropriate to limit the restriction on a Finder being an associated person of a broker-dealer to either (i) those persons who are actually registered under FINRA rules (that is, registered representatives or registered principals) or (ii) to use the definition of an “associated person” in FINRA Rule 1011(b) as opposed to the Exchange Act Section 3(a)(18) definition.

In the first instance, if the overriding concern to be addressed by this limitation is the potential for investor confusion and abusive sales tactics when a Finder is associated with a broker-dealer, the most significant risk would arise from entities which are already registered as a broker-dealer and are seeking to find an exemption. These individuals are already subject to broker-dealer regulation and as such it is reasonable that they should undertake any activities that are “finder” in nature subject to their registration obligations.

However, we recognize that there could be concern that it is possible for investors to experience confusion if employees of control persons of a broker-dealer (who may not themselves be required to register under current FINRA or SEC regulations) engage in finder activity subject to the Proposed Exemptive Order. This concern would be addressed, however, by incorporating the FINRA Rule 1011(b) definition into the Proposed Exemptive Order in place of the Exchange Act Section 3(a)(18) definition. The critical difference between these definitions is that the “under common control” element is not present in the FINRA definition of “associated persons.” By incorporating the FINRA Rule 1011(b) definition, the Proposed Exemptive Order would still not apply to anyone actually registered as a registered representative or registered principal of a broker-dealer, nor would it apply to an employee of an entity that controls a broker-dealer, but it would avoid the potentially unintended consequence of prohibiting employees and other individuals who would be unable to rely on the Proposed

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Exemptive Order solely by virtue of being “under common control” with a registered broker-dealer.

Thank you for the opportunity to provide our views. Please do not hesitate to contact me with any questions at [REDACTED] or Tom Bohac at [REDACTED].

Very truly yours,

LOCKE LORD LLP

A handwritten signature in black ink that reads "Michael K. Renetzky". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael Renetzky