ANTHONY L.G., PLLC

LAURA ANTHONY, ESQ
*GEOFFREY ASHBURNE, ESQ**
*JOHN CACOMANOLIS, ESQ***
CHAD FRIEND, ESQ, LLM
*SVETLANA ROVENSKAYA, ESQ****

OF COUNSEL:
*MICHAEL R. GEROE, ESQ, CIPP/US*****
*CRAIG D. LINDER, ESQ******
PETER P. LINDLEY, ESQ, CPA, MBA
STUART REED, ESQ
MARC S. WOOLF, ESQ

*licensed in CA
**licensed in FL and NY
***licensed in NY and NJ
****licensed in CA, DC, MO and NY
*****licensed in CA, FL and NY

WWW.ANTHONYPLLC.COM
WWW.SECURITIESLAWBLOG.COM
WWW.LAWCAST.COM

DIRECT E-MAIL [redacted]

November 12, 2020

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1010

Re: Comment letter on Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements; File No. S7-13-20

Ladies and Gentlemen:

As an introduction, I have been practicing corporate and securities law since 1993. After working in-house for a Nasdaq broker dealer, I founded this firm in 2001. During that time I have worked with hundreds of small to mid-size public and private companies and am extremely familiar with the challenges they face in the capital raising process.

As you are aware, most if not all small and emerging companies are in need of capital but are often too small or premature in their business development to attract the assistance of a banker or broker-dealer. In addition to regulatory and liability concerns, the amount of a capital raise by small and emerging companies is often small (less than $5 million) and accordingly, the potential commission for a broker-dealer is limited as compared to the time and risk associated with the transaction. Most small and middle market bankers have base-level criteria for acting as a placement agent in a deal, which includes the minimum amount of commission they would need to collect to become engaged.

As a result of the need for capital and need for assistance in raising the capital, together with the inability to attract licensed broker-dealer assistance, a sort of black market industry has developed, and it is a large industry. As the proposal notes finders "often play an important and discrete role in bridging the gap between small businesses that need capital and investors who are interested in supporting emerging enterprises." Further the lack of regulation makes it very difficult - "companies that want to play by the rules struggle to know in what circumstances they can engage a 'finder' or a platform that is not registered as a broker-dealer."

For those reasons, I am very supportive of the vast majority of the proposed exemptive order, but however, strongly disagree with the proposal to make the exemption unavailable for issuers that are subject to the Exchange Act reporting requirements.

The proposed exemption reasons that once a company is able to file reports under the Exchange Act it is more likely able to attract a licensed broker dealer and would not need an unlicensed finder. The proposal indicates that non-reporting companies are more likely to experience difficulty obtaining the assistance of a broker-dealer, and are therefore most likely to need the assistance of a finder. I disagree with this reasoning as a basis for limiting the exemption.

Certainly that reasoning may be true in some cases, but many broker-dealers will not work with small public companies, and many are simply prohibited from doing so. For instance Bank of America, and their brokerage, Merrill Lynch, has announced that it simply will not transact business in the securities of companies with less than a $300 million market cap and less than a $5.00-per-share stock price. Even many of the smaller tier brokerage firms that I deal with on a daily basis will not assist with a capital raise for an OTC Markets traded security unless the raise is a public offering in conjunction with an up-listing to a national exchange. Many of these brokerage firms clear through a clearing firm who in turn will not allow them to transact business with an OTC Markets issuer. Even those that will work with these smaller public companies, generally will not do so for a private capital raise, but rather will only work on public registered offerings.

If the argument to exclude reporting issuers is based on need, then there is a large group of small public companies that have a palpable need for assistance with exempt offering capital raising efforts that will be left unfulfilled. Exempt offerings are smaller than registered offerings. Even if a small company can attract a broker-dealer for a private capital raise, the commissions, expense reimbursement and fees are generally extremely high and the agreements generally include strong rights of first refusal (ROFR rights) and other provisions that can make the cost of capital unfeasible.

Further, knowing that by becoming subject to the SEC reporting requirements, the ability to use finder's will be foreclosed, many of these companies may delay a going public transaction, which in and of itself is contrary to the SEC's stated policies of encouraging public offerings and access to U.S. capital markets.

Furthermore, one of the SEC's core missions is the protection of investors. Companies that are subject to the Exchange Act reporting requirements are audited by independent auditors and required to comply with Sarbanes Oxley Act Rule 404(a) requiring the company to establish and maintain internal controls over financial reporting and disclosure control and procedures and have their management assess the effectiveness of each. These companies are subject to robust disclosure requirements delineated by Regulation S-K and financial disclosure requirements under Regulation S-X. Clearly, investors have much greater protections with the use of finders on behalf of a reporting company than a small private company.

Accordingly, I am hopeful you will reconsider and allow the exemption to be utilized by companies subject to the Exchange Act reporting requirements.

Sincerely yours,

Laura Anthony

625 N. FLAGLER DRIVE, SUITE 600 • WEST PALM BEACH, FLORIDA • 33401 • PHONE: [redacted] • FAX [redacted]