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VIA EMAIL: rule-comments@sec.gov
Securities and Exchange Commission

Re: Proposed Exemptive Relief for Finders
Release No. 34-90112; File No. S7-13-20

Dear Commissioners:

We are writing in partial opposition to the above Commission proposed Exemptive Relief on behalf of our numerous smaller corporate clients ("Unlisted Issuers") which have common stock that is not listed on one of the major national securities exchanges, namely the New York Stock Exchange or the Nasdaq Stock Market. These Unlisted Issuers are required to file reports with the Securities and Exchange Commission (the "Commission"), primarily as the result of having registered common stock under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act"). Our concern is the proposal is not broad enough and unfairly penalizes these Unlisted Issuers, all of which are small businesses that have been adversely affected by the COVID-19 pandemic and the resulting effect on the economy. Although we support and commend the Commission's efforts to provide clarity in the so-called "gray market" of finders with respect to exemption from broker-dealer registration, the proposed exemption would unfairly exclude many issuers who require access to the U.S. capital markets but do not have the financial means to hire sufficient legal and financial professionals to attract the declining number of small broker-dealers.

Failure to Exempt Unlisted Issuers

An issuer's status as a reporting company alone is not an indication of financial stability or adequate access to capital. Many reporting companies have a limited market for their securities, minimal financial resources, and/or very few employees and personnel, and therefore may have to rely on exempt finders to locate investors and raise capital. On countless occasions since the Commission Staff declined to issue a no-action letter in 2010[1], we have advised Unlisted Issuers (primarily Section 12(g) companies) not to use a proposed finder in order to avoid the risk of litigation or a Commission investigation. Clearly the Commission is seeking to provide clarity and enhance capital formation by the proposed Exemptive Order; however its narrow approach does not achieve that goal. Without the availability to use a finder, the Unlisted Issuer finds itself in a difficult situation: such issuer remains subject to the expensive reporting requirements of the federal securities laws but with a diminished ability to raise additional capital.

[1] Brumberg, Mackey & Wall, PLC, SEC No-Action Letter, 2010 WL 1976174 (May 17, 2010).

While we have no actual knowledge, it is likely that reporting companies to some degree rely upon finders for assistance in locating prospective investors. Yet these same issuers, despite having greater expenses and commensurate increased capital requirements by virtue of filing Exchange Act reports, would be denied the ability to utilize a finder, which due to the proposed Exemptive Order are otherwise available at a relatively low cost and consequently may be the only commercially feasible alternative in the search for new investors. If the Exemptive Order is issued, a critical segment of the economy would therefore see a drastic decline in capital raising options. This result is contrary to a central purpose of the federal securities laws as stated in the proposal: to provide small businesses with access to the U.S. capital markets, and the proposed Exemptive Order would also undermine another central purpose of the federal securities laws and regulations: to protect investors by ensuring that they receive adequate material information regarding an issuer prior to making the important and risk-prone decision of investing in the issuer's securities. The concept of robust disclosure has long been the centerpiece of America's regulatory framework in the securities markets. By allowing private issuers to employ finders while providing limited disclosure to investors, effectively rewarding such businesses for non-disclosure, while simultaneously denying the use of finders to Unlisted Issuers and effectively punishing such issuers solely for providing valuable disclosure, and without due consideration of whether those reporting companies are also small businesses, would be inconsistent with these goals.

Over the last 20 years, there has been a noticeable decline in the number of smaller broker-dealers resulting from the consolidation of major firms and likely the increased regulatory approach of the Financial Industry Regulatory Authority ("FINRA"). While FINRA may perform an important role in assisting the Commission and its Staff in combatting penny stock fraud, the undersigned has had a number of experiences in communicating with compliance personnel where concerns of possible FINRA review led the broker-dealer to say no to proposed actions, even where the proposed conduct appeared to be lawful. Further, the broker-dealers that still permit transactions in Unlisted Issuers impose material compliance costs and fees that discourage investors from effecting purchases or sales of such Unlisted Issuers.

The paucity of smaller broker-dealers willing to raise capital coupled with the impact of the Commission's penny stock rules on Unlisted Issuers has created a perfect storm. These Unlisted Issuers need capital, and the limited pool of potential broker-dealers and the costs create a need for using finders who often have personal relationships and can access risk capital. In terms of risk, our practice is to require Unlisted Issuer clients to include robust risk disclosure in offering documents even though the offerings are solely directed to accredited investors. The only exception is when professional hedge funds and family offices, all of which can "fend for themselves," are the sole investors. The Commission could as a condition of broadening the Exemptive Order to permit its application to cover Unlisted Issuers require risk factor disclosure for that class of issuers except for individual investments over $100,000, for example.

The Commission has long recognized that not all issuers should be subject to the same rules merely by virtue of their status as reporting companies. This notion is exemplified by the differing deadlines for the filing of periodic reports based on an issuer's status as a "large accelerated filer," "accelerated filer" or "non-accelerated filer" under the Commission's rules. Similarly, the disclosure requirements of reporting companies, which often includes varying levels of disclosure that an issuer must provide, depends on an issuer's being a "well-known seasoned

issuer" or a "smaller reporting company." These categories, which are based on the value of the issuer's securities (including based on public float) or annual revenues, demonstrate the Commission's willingness to acknowledge that some issuers require more time to provide meaningful disclosure, or may lack sufficient resources to prepare highly detailed disclosure, and that addressing these differences, including through divergent regulatory treatment, is therefore appropriate. We would therefore respectfully request that the Commission consider the ramifications on Unlisted Issuers with limited financial or other resources and their difficulties in raising capital. The Commission can peruse its own EDGAR filings and see the uniform risk factor disclosure in annual reports on Form 10-K and registration statements about the substantial lack of liquidity for stocks of penny stock issuers. In so doing, we also ask that the Commission afford due consideration to the reality that the proposed Exemptive Order would likely eliminate what was until 2010 an important "exemption" for finders in capital raising transactions for Unlisted Issuers. merely because of their status as reporting companies. We caution against the aggregation of all categories of reporting companies into a single class, as such an over-simplification ignores the complexities of the securities markets and the capital shortages faced by most Unlisted Issuers, and contradicts the purposes for which the federal securities laws and regulations, including applicable exemptions, exist.

For the foregoing reasons, we respectfully request that the Commission not adopt the exemption as proposed and consider extending it to Unlisted Issuers as we suggest.

Respectfully submitted,

NASON, YEAGER, GERSON,
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Michael D. Harris