

November 12, 2020

Submitted via email to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

**Re: 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 (Release No. 34-90112; File No. S7-13-20)**

Dear Ms. Countryman:

We congratulate the Commission for addressing the issue of finders (“Finders”) in the proposed exemptive order referenced above (the “Proposed Order”). The signatories to this comment letter have been deeply involved in the “Finders” issue for many years. Our views on the regulation of Finders have been developed through many discussions among ourselves and other attorneys who have focused on the Finder issue, as well as with federal and state regulators and elected officials. At this time of severe economic distress in the United States, any step that the Commission takes to renew our economy and get our businesses open and profitable, especially for those entrepreneurs most in need of access to capital, is deserving of support. While one of the Commission’s missions is to protect investors, an equally important mission is to facilitate capital formation. These two critical missions should work hand in hand; they do not represent opposing values and this should not be reduced to a binary choice.

Each of the signatories to this comment letter is signing in his or her individual capacity and not as member of any organization or firm with which such signatory is associated. Each of the signatories has indicated substantial agreement with the comments contained herein.

We are specifically commenting on Items 6 and 7 of the Proposed Order.

**6. *Have we appropriately limited the types of investors whom a Finder can “find” or solicit? Instead of limiting potential investors to those the Finder reasonably believes are accredited investors, should investors identified by Finders be subject to investment limitations, regardless of the exemption being relied upon, such as a dollar limit on the size of the investment? If so, please specify.***

While believing that the “accredited investor” qualification is an appropriate basis for the Proposed Order’s exemptive relief, particularly as that definition has recently been expanded, we also encourage the Commission to consider, either now or at a future time, a path for Finders to identify members of their communities who are not accredited investors who may on a limited basis wish to invest in local entrepreneurs, much as they can accomplish under Reg CF, Crowdfunding, perhaps by cross-referencing those qualifications and limitations.

For a long time we have, when discussing Finders, used the example of the country club casual introduction, albeit for a fee. However, limiting Finders to finding or soliciting only accredited investors could be interpreted by some as failing to recognize the needs of underserved entrepreneurs including, but not limited to, minorities, women and persons living in areas that are lower income and/or more rural areas that may have been overlooked by traditional investment bankers. In these communities, the entrepreneur’s potential investor pool may consist in substantial part of customers or clients of the entrepreneur who are not accredited investors but who live in the same community, know the entrepreneur well and form a network that would wish to invest in her enterprise – a community version of a country club or social/business network. If a community resident wants to invest in a neighborhood bakery, and the resident and bakery owner have known each other for years, why should he or she not be allowed to invest because that person is not an accredited investor in a case where the network is facilitated by a Finder? He or she may not meet this financial test, but they have the background and knowledge in the owner and his/her business to make an investment decision in this and similar situations.

This issue has become especially acute during the pandemic. A brief issued by the New York Federal Reserve Bank on August 4, 2020, on the effects of COVID-19 on Black entrepreneurs pointed out that Black owned businesses were substantially more likely to shutter as firms overall. From February to April 2020, Black owned businesses declined by 41 percent and Latino owned businesses declined by 32 percent. Claire Kramer Mills, assistant vice president at the New York Fed, was quoted in the New York Fed’s Press Release regarding the Brief: “These firms had weaker financial cushions, weaker bank relationships, and preexisting funding gaps prior to the pandemic. COVID-19 has exacerbated these issues and businesses in the hardest hit communities have witnessed huge disparities in access to federal relief funds and a higher rate of business closures.”

We believe that it would be reasonable to limit the amount a non-accredited investor could invest. Unless the investor is willing and able to provide the Finder or the Issuer with enough verifiable financial information to calculate the investor’s net worth or income in order to impose a percentage of net income or worth test, a flat dollar limit could be imposed. We suggest that \$10,000 per investor might be a reasonable limit.

It is our hope that the Commission will undertake creative efforts, perhaps collaborating with other federal and state agencies, to address this issue.

**7. *Should the Finder be prohibited from engaging in general solicitation as proposed? Would this create practical problems for a Finder? For example, would a Finder be able to establish a pre-existing substantive relationship with investors in order to not engage in general solicitation?***

We believe that it would be helpful for the Commission to consider a more nuanced and clarified definition of general solicitation for purposes of the Proposed Order. Although the general solicitation prohibition is necessary for consistency with many of the available private offering exemptions available to an issuer, not all offering exemptions and exclusions prohibit it. One example is that the intrastate offering exemption commonly available for small offerings is not dependent upon the absence of general solicitation. In those offerings, a more general solicitation—even if localized—could otherwise be permissible.

If a short notice were placed in a church bulletin regarding the possibility of investing in a community-based dog training facility, and giving the Finder's contact information, would that constitute a general solicitation? This idea is similar to relief given in certain No-Action Letters, and explicitly permitting such a limited form of solicitation could constitute a creative way to assist entrepreneurs with no access to the capital they need to start or maintain their businesses.

Moreover, the general solicitation prohibition thereby presupposes a pre-existing relationship between a Finder and a prospective investor. The very existence of such a relationship may—indeed often—imputes a level of interpersonal trust and confidence between them. As explained above, this relationship imbues an introduction, meeting, or discussion with that trust and confidence, and is readily interpreted by the investor as a recommendation, advice, or the advisability of making the investment presented.

Very truly yours,

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