

SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES

Washington, DC 20549-3628

May 15, 2017

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chairman Clayton:

As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such businesses and companies are subject.

On behalf of the Advisory Committee, we are pleased to submit the enclosed recommendation regarding the regulation of finders and other intermediaries in small business capital formation transactions. This topic has been discussed at multiple Advisory Committee meetings, most recently on October 5, 2016 and February 15, 2017, and the recommendation was approved by the members of the Advisory Committee present and voting at a meeting held May 10, 2017.

We and the other members of the Advisory Committee are prepared to provide any additional assistance that the Commission or its staff may request with respect to these recommendations.

Respectfully submitted on behalf of the Advisory Committee,



Stephen M. Graham
Committee Co-Chair



Sara Hanks
Committee Co-Chair

Members of the Advisory Committee

Robert Aguilar
Xavier Gutierrez* **
Brian Hahn
Jenny Kassan**
Catherine V. Mott
Jonathan Nelson**
Patrick Reardon
Lisa Shimkat
Annemarie Tierney
Gregory C. Yadley*
Laura Yamanaka

Non-voting members

Michael Pieciak
Joseph Shepard*

* These members plus Co-Chair Stephen Graham were not present at the meeting held on February 15, 2017.

** These members were not present for the Advisory Committee discussion and vote held on May 10, 2017.

Enclosure

cc: Commissioner Michael S. Piwowar
Commissioner Kara M. Stein
Heather Seidel
Joanne Rutkowski
Shelley E. Parratt
Elizabeth Murphy
Sebastian Gomez Abero
Julie Z. Davis

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

**Recommendation Regarding Finders, Private Placement Brokers, and
Investment Platforms Not Registered as Broker-Dealers**

AFTER CONSIDERING THAT:

- 1) Identifying potential investors is one of the most difficult challenges for small businesses trying to raise capital.
- 2) There is significant uncertainty in the marketplace about what activities require broker-dealer registration under Section 15 of the Securities Exchange Act of 1934. Companies that want to play by the rules struggle to know in what circumstances they can engage a “finder” or platform that is not registered as a broker-dealer.
- 3) As evidenced in the [Report and Recommendations of an American Bar Association Business Law Section Task Force in 2005](#), a [recommendation from this Committee in 2015](#), as well as in numerous other prior and subsequent communications to the Commission, for years many interested parties have urged the Commission and its staff to take steps to address this ambiguity.
- 4) The inadequate actions that have been taken have been limited to staff interpretations, such as no-action letters. Because these interpretations do not have the weight of Commission action, they have limited utility. Also, the staff interpretations are very limited in their scope.
- 5) The Committee is disappointed the Commission has not taken actions to help to address these concerns despite repeated and longstanding requests.

THE COMMITTEE RECOMMENDS THAT:

The Commission adopt rules in the near future to provide regulatory certainty for finders, private placement brokers, and platforms not registered as broker-dealers involved in primary and secondary transactions of unregistered securities. Pending adoption of any new rules, staff in the Division of Trading and Markets should with all deliberate speed bring clarity and certainty in this area by promulgating appropriate guidance.