May __, 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  Sara Hanks  
Committee Co-Chair  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
Michele Schimpp

* 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 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. 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) For years, many interested parties have urged the Commission and its staff to take steps to address this ambiguity. As one recent example, in 2015, this Committee recommended that the Commission “take immediate intermediary steps to begin to address issues regarding the regulation of intermediaries in small business capital formation transactions….”

4) 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 take action in the near future to provide certainty in the context of finders and platforms involved in primary and secondary securities transactions. The range of potential options includes compliance or enforcement efforts, rulemaking, or coordination with the states. Even staff guidance such as Q&A’s as to what constitutes broker-dealer activity would be tremendously helpful.