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Via E-Mail To: rule-comments@sec.gov

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

RE: File No. S7-13-20; Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of the Securities and Exchange Act

Dear Ms. Countryman:

It is a positive sign that the Securities and Exchange Commission (Commission and or SEC) is finally addressing the use of finders. Subject the comments contained herein, we support the Commission's effort to provide tools to assist smaller "Main Street" issuers address their capital needs, including specifically the ability to utilize finders. Based upon both communications with our clients, and our experience in this area, the following sets forth our comments on a number of the specific questions the Commission is requesting comments on:

1. **Question 2. Have we appropriately defined Tier I Finders and Tier II Finders?**

   The intent of the Commission is clear to separate a pure introduction from a solicitation. And as such the two tiers appear appropriate; however; the ability of a Tier II Finder to discuss issuer information included in any offering materials appears problematic in that there is a very thin line between the presentation of the material, and the implied recommendation that is made from the very delivery of the presentation. As a result, it would appear that the discussion of the investment moves beyond mere solicitation of an investment into a sales pitch, and as such a recommendation. The Commission should give thought to this issue and either remove this activity, or give clear guidance to finders on how to mitigate the potential for an inadvertent violation based on an implied recommendation, which would result in the loss of the exemption on the finder.

2. **Question 3. Should the definition of Finder be limited to natural persons?**

   Yes, based on two premises. The first is that unlike a registered broker/dealer that is required to publicly disclose whether any associated persons are subject statutorily disqualified, there is no like requirement in the proposed exemption. As a result, an issuer would have to review the public records on all employees, owners and control persons of an entity to protect themselves from a "bad actor" inadvertently being employed by an entity. That background check on a single individual would be more practical for an issuer.

   The second reason for not utilizing entities to be finders is that it increases the opportunity for confusion in the market. A broker-dealer can generally perform full-service with respect to

capital raises for its clients, including (i) structuring the transaction or negotiating the terms of the offering; (ii) participation in the preparation of any sales materials; (iii) performance of any independent analysis of the sale; (iv) engaging in "due diligence" activities; (vi) assisting or providing financing for such purchases; or (vii) providing advice as to the valuation or financial advisability of the investment. A finder is specifically limited in those activities. As a result, unsophisticated issuers may be unsure of the actual differences, which increases the potential for abuse of the finder exemption.

3. **Question 5. Have we appropriately identified the activities in which each tier of Finder should and should not be able to engage?**

   See response to Question 2 above.

4. **Question 7. Should the Finder be prohibited from engaging in general solicitation as proposed?**

   In order to have a consistent application of the regulations and a level field for issuers and those marketing private securities in reliance on SEC Rule 506, Finders should also be required to comply with 506(b), which prohibits general solicitation. Notwithstanding that, the Commission should (i) provide guidelines on how a Finder could establish a pre-existing substantive relationship, as the current guidance is focused on broker-dealers; and or (ii) how a Finder could evidence Accredited Investor status under 506(c), in which case general solicitation should be acceptable.

5. **Question 9. Have we appropriately limited the number of offerings a Tier I Finder can participate in on an annual basis?**

   It would appear that as a Tier I Finder, the focus is on the simple introduction, and not a primary business activity. Therefore, it would appear limiting the number of issuer transactions is more appropriate than setting up conditions on not putting themselves out to the public as a finder (consistent with the Texas Finders statute approach). Notwithstanding that, both approaches are appropriate in that Tier 1 should really be viewed as a "introduce and step away" relationship.

6. **Question 10. Is the limitation that Tier I Finders do not have any contact with potential investors about the issuer workable?**

   It would be appropriate to allow a Tier I Finder to be allowed to make a physical introduction, either in person, by phone or email, etc. Attendance at a meeting can be limited to the introduction, and all additional conditions could still be imposed. To limit the finder to providing contact information that is accessible in the phone book, not only ignores the business value of the introduction, but it is also inconsistent with the confidentiality obligations broker-dealers face with respect to Regulation S-P. To not allow the potential investor the opportunity to say no to having their contact information provided to an issuer appears problematic.

7. **Question 19. Should we adopt comparable disclosure requirements with disclosures required under the proposed changes to Rule 206(4)-3 under the Advisers Act for solicitations of investors in private funds, if adopted?**

   The disclosures made to investors in private funds pursuant to the proposed changes to Rule 206(4)-3 under the Advisers Act should satisfy the disclosure requirement to be made to such investors for Tier II Finders.

8. **Question 21. Should Tier I Finders be subject to a disclosure and acknowledgment requirement?**

   Investors should be provided with full disclosure of compensation, relationships and conflicts of the Finder. An investors' right to obtain those disclosures should not be conditioned on whether the Finder is a Tier I or Tier II Finder.

9. **Question 22. Should Tier II Finders be required to enter into a written agreement with the issuer where the issuer, without affecting the Finder's obligations, also assumes liability with respect to investors for the Finder's misstatements in the course of his or her engagement by the issuer?**

   We do not believe that the issuer should be required to assume liability for the Finders misrepresentations in a written contract, as the issuer already has that liability. Notwithstanding that, all Finders should be required to have a written agreement with the respective issuers to clearly set forth the services to be provided and compensations for same. This is for the issuers benefit, in that if the Finder provides services that are not allowable under the exemption, and the Finder loses the benefit of the exemption for transaction-based compensation received, the issuer faces significant issues with respect to the offering.

10. **Question 23. Should the proposed exemption be conditioned on a Finder filing a notice with the Commission of reliance on the exemption from registration?**

    Finders should be required to notice file so that the Commission is aware of their activities, and has information available in the event of investor issues. Additionally, it may provide some comfort to issuers that the Finders know the SEC has the ability to monitor. We would suggest the Texas Finders Statute be reviewed as to the information requested, however, we are not recommending registration, only notice filing.

11. **Question 26. Should a Finder be able to receive a financial interest in an issuer as compensation for its services?**

    A Finder should be able to receive a financial interest in an issuer as compensation for its services, but disclosures regarding the market value, equity interest of the compensation, and related conflict of interests should be required in the written disclosures required to be made to the investor.

12. **Question 29. Should we provide further guidance on the solicitation-related activities in which Tier II Finders can engage on behalf of an issuer, for example, guidance surrounding a Tier II Finder's discussion of issuer information and arrangement and participation in meetings with issuers and investors?**

The Commission should provide initial guidance on the solicitation-related activities, as that guidance is currently primarily based on No-Action-Letters enforcement actions, and does not provide clear guidance for either current market stakeholders or on the new exemptive proposal.

13. **Question 30. Should we provide guidance regarding activities of private fund advisers, M&A Brokers as defined in the M&A Broker Letter, or real estate brokers that may require registration under Section 15(a) of the Exchange Act?**

    Yes, clear guidance would be welcomed by market stakeholders, and the Commission should consider codifying the M&A Broker Letter.?

14. **Question 39. Would the proposed exemption have a competitive impact on registered brokers?**

    It is our opinion that the proposed exemption would have a minimal impact on our broker-dealer clients; provided that our broker-dealer clients were able to (a) pay Finders transaction based compensation for services provided (those services being consistent with either Tier); and (b) the Commission enforced the limitations on Finders, i.e., the Finders could not (i) be involved in structuring the transaction or negotiating the terms of the offering; (ii) participate in the preparation of any sales materials; (iii) perform any independent analysis of the sale; (iv) engage in any "due diligence" activities; (v) assist or provide financing for such purchases; or (vi) provide advice as to the valuation or financial advisability of the investment.

15. **Question 43. Should we coordinate with other regulators to provide clarity and consistency on what types of activities Finders and other limited purpose brokers may engage in?**

    The Commission should provide clear guidance to FINRA regarding the ability of FINRA member firms to pay either a Tier I or Tier II Finder transaction-based compensation for services provided to the member firm with respect to its banking activities.

Thank you for your consideration of our comments. Should you have any questions, please contact the undersigned at [redacted]

Respectfully submitted,

Daniel E. LeGaye
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