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November 5, 2020

[Via Email \(rule-comments@sec.gov\)](mailto:rule-comments@sec.gov)

Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**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**

**File No. S7-13-20**

Dear Ms. Countryman:

We appreciate the opportunity to comment on the proposed exemptive order referenced above. Our background is comprehensive, both (a) primarily as issuer's counsel, where issuer's and their attorneys have struggled for an extended period of time to manage finders under a variety of federal and state laws, and (b) as successive former Directors of the Utah Division of Securities.

We have not responded to all of the questions in the Notice, but the numbers below correspond with the question. In addition to the questions posed in the Notice, we wanted to emphasize a singular recommendation. We believe it is critical to structure the exemption pursuant to Section 15(i) of the Securities Exchange Act of 1934 so that there is preemption of regulation at the state level. This will contribute to a uniform understanding of the exemption and ultimately to its increased application and use.

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

If you are going to limit the definition to natural persons, then allow that person to operate through a wholly-owned corporate or limited liability company entity to take full advantage of liability protection and tax benefits.

**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?**

Yes. The activity that this exemption should allow is the payment of transaction based fees for an introduction and a certain level of involvement in structuring a transaction, not solicitation.

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

At some point, a Finder engaged in a certain level of activity should register as a broker, but limiting the number of offerings to one is too few. I recommend up to three or five.

**15. Should Finders only be able to “find” or solicit for primary offerings? Should we expand the scope of the proposed exemption to secondary offerings, such as transactions facilitating the sale of equity by employees holding options or warrants?**

Yes, Finders should be limited only to primary offerings. Secondary offerings are much more complex and involve a higher level of negotiation and sophistication.

**20. Should Tier II Finders be required to receive an acknowledgment of receipt of the required disclosure from the investor? If so, are there methods other than an acknowledgment, for example, a read receipt for e-mail, that could serve to validate that investors received the required disclosure?**

No. Finders may do so as a matter of best practices, but the exemption should not be conditioned on it.

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

No. Finders may do so as a matter of best practices, but the exemption should not be conditioned on it.

**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?**

No. This is unduly burdensome on issuers, interferes with the parties’ rights to enter into contractual relationships on their own, and relieves Finders of any responsibility for their actions.

**23. Should the proposed exemption be conditioned on a Finder filing a notice with the Commission of reliance on the exemption from registration? Why or why not? If so, when should Finders be required to file the notice? What, if any, disclosures should be required in the notice?**

No. If a Finder is not intimately involved in the transaction, they may not even know that it has happened after their introduction. Put the burden on the issuer, and I think it's reasonable to have the issuer identify the name and address of the Finder in the notice.

**24. Should there be any limitations on the amount of fee a Finder can receive?**

No, allow the parties to freely contract on their own.

**26. Should a Finder be able to receive a financial interest in an issuer as compensation for its services? Why or why not?**

Yes, aligning the interests of the issuer, finder, and investor is beneficial.

**28. Should we provide guidance on how a Finder can establish that he or she did not know and, in the exercise of reasonable care, could not have known, that the issuer had failed to comply with the conditions of an exemption?**

Yes, it would be helpful to have guidance on how a Finder could show that or she did not know that the issuer failed to comply with the conditions of an exemption.

**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?**

Yes, and how that compares to solicitation-related activities that an issuer may engage in, depending on the exemption.

**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? Should we consider codifying the *M&A Broker Letter*?**

Yes.

**36. Should the proposed exemption be limited to individuals who are not associated persons of a municipal advisor or investment adviser representatives of an investment adviser?**

Yes, those groups have an independent regulatory environment and different duties.

**37. Should the proposed exemption be limited to individuals who are not associated persons of an issuer? Why or why not?**

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U.S. Securities and Exchange Commission  
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No, an employee or contractor working for the issuer should be able to receive transaction based compensation just as a third party would. Requiring disclosure of the Finder's associated status could be required so that the investor is more fully informed.

Thank you for your time and attention to this matter.

Sincerely,

Brian A. Lebrecht  
Keith M. Woodwell  
Thomas A. Brady