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November 12, 2020

Submitted electronically to rule-comments@sec.gov

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

RE: File No. S7-13-20: 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

Dear Ms. Countryman:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),[1] I am writing in response to U.S. Securities and Exchange Commission ("SEC" or the "Commission") Release Number 34-90112, *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* (the "Proposal"),[2] in which the Commission proposes to exempt persons engaged in certain brokerage activities from the registration requirements of the Securities Exchange Act of 1934 (the "Exchange Act").

I. Introduction

NASAA opposes the Proposal for many of the same reasons we have opposed the Commission's other recent actions to expand the private markets. This is another instance in which the Commission seeks to expand the private markets with no commensurate effort either to protect investors from the evident risks of fraud, or to understand how an exemption could be abused.

More specifically, NASAA opposes the Proposal because it would harm investors by withdrawing regulatory oversight and professional controls from persons and situations known to be prone to abuse. Further, what limited controls the Commission proposes would be inadequate because they cannot ensure that finders would not solicit unsophisticated investors, they are too

[1] Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

[2] The Proposal is available at https://www.sec.gov/rules/exorders/2020/34-90112.pdf.

vague to enforce, and they cannot be monitored for compliance. Ironically, the Proposal could also harm small business capital formation by harming issuers and repelling investors.

For these reasons, NASAA asks the SEC not to move forward with the Proposal, but instead to engage with state securities regulators, self-regulatory organizations ("SROs"), and other stakeholders to determine an appropriate regulatory framework that would provide finders with clarity while establishing necessary investor safeguards.

II. The Proposal Threatens to Harm Investors.

A. The Proposal Would Withdraw Oversight from Persons and Situations Known to Be Prone to Abuse.

The evidence is clear that fraud and other harms occur frequently where unregistered persons promote unregistered products to retail investors. For example, NASAA's 2020 Enforcement Report showed that, in 2019, NASAA members brought 738 enforcement actions against unregistered persons, including against 57 unregistered finders or solicitors.[3] The number of NASAA member enforcement actions against unregistered persons has increased in recent years, more than doubling since 2015.[4] NASAA has repeatedly informed the Commission of the prevalence of abuse in the private markets, and has provided numerous examples.[5]

While the Commission has acknowledged previously that it lacks data about the private markets,[6] its staff is thankfully undertaking efforts to learn more about fraud and abuse in this area. In August, the Commission's Division of Economic and Risk Analysis published a study of fraud in the private markets based on Commission enforcement actions brought over a single year.[7] From even that small sample, the staff was able to conclude that "offerings linked to SEC enforcement actions more likely involved an unregistered intermediary or a recidivist, or solicited

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[3] *See* NASAA 2020 Enforcement Report at 5, *available at* https://www.nasaa.org/wp-content/uploads/2020/09/2020-Enforcement-Report-Based-on-2019-Data-FINAL.pdf.

[4] *See* NASAA 2019 Enforcement Report at 6, *available at* https://www.nasaa.org/wp-content/uploads/2019/11/2019-Enforcement-Report-Based-on-2018-Data-FINAL.pdf.

[5] *See* Letter from NASAA President Christopher Gerold to Vanessa Countryman, *Re: File No. S7-05-20: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets* (June 1, 2020) at 12, *available at* https://www.sec.gov/comments/s7-05-20/s70520-7258827-217615.pdf; and Letter from NASAA President Christopher Gerold to Vanessa Countryman, *Re: File No. S7-08-19: NASAA Comment Letter Regarding Concept Release on Harmonization of Securities Offering Exemptions* (Oct. 19, 2019) at 3, *available at* https://www.sec.gov/comments/s7-08-19/s70819-6288085-193367.pdf.

[6] *See*, *e.g.*, *Concept Release on Harmonization of Securities Offering Exemptions*, SEC Rel. No. 33-10649 (June 18, 2019) at 23-24, *available at* https://www.sec.gov/rules/concept/2019/33-10649.pdf (stating that "[d]ue to data limitations, it is difficult to draw rigorous conclusions about the extent of fraud in exempt securities offerings" and "it is also difficult to draw rigorous conclusions about the average magnitude of investor gains and losses in exempt securities offerings").

[7] Rachita Gullapalli, *Misconduct and Fraud in Unregistered Offerings: An Empirical Analysis of Select SEC Enforcement Actions*, SEC Division of Economic and Risk Analysis (Aug. 2020) ("DERA Study"), *available at* https://www.sec.gov/files/Misconduct%20And%20Fraud%20In%20Unregistered%20Offerings.pdf.

from unsophisticated investors."[8] This is consistent with the experience of state regulators. The staff also observed that studies indicate that "fraud is more likely to occur when there are fewer outside gatekeepers like underwriters, analysts and regulators."[9] That is precisely NASAA's concern with the Proposal; it would remove regulatory oversight from the persons most likely to engage in misconduct in the situations in which fraud and other violations are most likely to occur.

Against this evident and recognized danger, the Proposal states merely that "[t]he Commission preliminarily believes that there are situations where the need to impose the broker registration requirement may be mitigated by other factors" and that finders "may play an important role in facilitating capital formation."[10] Given the experiences of state securities regulators and available evidence, NASAA disagrees that this is an area where regulatory safeguards should be weakened, and the Commission has offered no support for its beliefs.

B. The Proposal Would Lift Controls That Ensure Professionalism and Allow Regulators to Impose Discipline Short of Antifraud Remedies.

The Proposal states that finders would not be excused from the antifraud provisions of the federal securities laws and "other applicable laws."[11] That is not a sufficient assurance that investors would be protected. An exemption of this magnitude would remove an entire dimension of oversight and enforcement. Importantly, the Proposal would excuse persons who would otherwise be required to register as broker-dealer representatives from SRO requirements, particularly those of the Financial Industry Regulatory Authority, Inc. ("FINRA"), which supplement federal requirements in ways that help protect investors.[12] Controls such as licensing, registration, and examination perform essential gatekeeper functions.

Benefits of SRO oversight that would be lost under the Proposal include examinations to establish minimal competency to deal with investors, background checks that capture circumstances less severe than statutory disqualification that nevertheless could be of concern to regulators and customers (such as bankruptcies and liens), continuing education requirements,[13] recordkeeping requirements, and customer dispute mechanisms.

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8 *Id.* at 33.

9 *Id.* at 10 (citing academic studies).

10 Proposal at 16.

11 *Id.* at 29.

12 As FINRA's President and Chief Executive Officer, Robert Cook, put it, an "advantage that has traditionally been identified is that SROs can raise the standard of conduct in the industry. This benefit is most apparent in the ethical requirements and detailed business conduct rules that an SRO can establish that extend beyond the realm of federal law. *These standards can deter dishonest and unfair practices that might not amount to fraud, but nonetheless can undermine investor confidence and compromise capital formation*. Robert W. Cook, *Remarks: New Special Study Conference*, Columbia University, New York, NY (Mar. 24, 2017) (emphasis added), *available at* https://www.finra.org/media-center/speeches-testimony/remarks-new-special-study-conference.

13 As just one example relevant to the Proposal, questions and content related to the accredited investor definition are part of FINRA's Regulatory and Firm Element continuing education content. Such content is designed to help member representatives gain a reasonable understanding of whether an investor is accredited.

A particularly important shortcoming of the Proposal is that it would leave harmed investors with no means to seek redress or means to warn other investors of unscrupulous finders. The recordkeeping and public information systems applicable to intermediaries in the capital markets do just that,[14] but they would be ineffective if finders are exempt from registration. Indeed, it is logical to expect that exemption from registration and its attendant recordkeeping systems would attract persons whose disciplinary records make them unemployable by reputable firms. State securities regulators and SROs have spent millions of dollars and thousands of hours developing systems to help investors identify problematic intermediaries, and to help firms hire qualified persons. The Proposal would undermine those efforts.

C. The Proposal Ignores Previous Recommendations to Coordinate with State Securities Regulators.

The question of how to handle finders has been the subject of several previous studies, none of which recommended a sweeping exemption from regulatory oversight. In 2005, the American Bar Association's Task Force on Private Placement Broker-Dealers (the "Task Force") issued a report which recommended that federal and state regulators should "work to establish a simplified system of registration" for finders.[15] Importantly, the Task Force concluded that it would be a mistake to give finders a blanket exemption from registration because doing so

> "would not address the current concern regarding the number of unscrupulous parties that are engaged in these activities. *Indeed, creating an exemption would be likely to exacerbate the situation by permitting these parties to hide behind the available exemption.* In contrast, a registration system would permit parties to determine whether the individuals they are contracting with to provide finder services are in compliance with applicable registration requirements."[16]

While the Proposal would require a finder to form a reasonable belief that an investor is accredited, freeing finders from SRO continuing education requirements would deprive them of the tools for making such determinations.

[14] As NASAA recently advised the Commission, the existence of such information on BrokerCheck and the Investment Adviser Public Disclosure site provides investors with the ability to evaluate financial intermediaries, and employers with the means to screen persons with disciplinary histories. *See* Letter from Lisa Hopkins to Vanessa Countryman, *Re: File Number SR-FINRA-2020-030: Proposed Rule Change to Amend the Codes of Arbitration Procedure Relating to Requests to Expunge Customer Dispute Information, Including Creating a Special Arbitrator Roster To Decide Certain Expungement Requests* (Oct. 22, 2020) at 1-2, *available at* https://www.nasaa.org/wp-content/uploads/2020/10/NASAA-Comment-Letter-SR-FINRA-2020-030.pdf.

[15] American Bar Association Task Force on Private Placement Broker-Dealers, *Report and Recommendations* (June 30, 2005) at 3, *available at* https://www.sec.gov/info/smallbus/2009gbforum/abareport062005.pdf.

[16] *Id.* at 48 (emphasis added). The Task Force also doubted the Commission would ever countenance a blanket exemption from registration.

The Task Force's recommendation to establish regulations for finders was further supported by the SEC's Advisory Committee on Small and Emerging Companies which, in 2015 and 2017 letters to the Commission, recommended similar measures. In particular, the 2015 letter advocated for the Commission to lead a joint federal/state regulatory effort to effectuate regulation of finders by the states.[17] The 2017 letter reiterated this need for action.[18] The 2017 Treasury Department Report cited in the Proposal similarly recommended that the Commission, FINRA, and the states develop and implement a new "broker-lite" regulatory regime on finders.[19] While the Proposal cites these studies for support, it curiously does not explain why exempting finders from registration would be preferable to tailored regulatory regimes as these studies recommended. The Proposal is therefore out of step with numerous previous considerations of the issue.

Previous recommendations in favor of registration make sense because finders engage in activities which are core broker-dealer activities, including introducing investors to issuers, evaluating investors for suitability (in this case, by ensuring that they are accredited), and receiving transaction-based compensation. Indeed, because the Commission notes that state law requirements would continue to apply, it must realize that state securities regulators will need to respond to a newly-created regulatory vacuum to ensure that persons who would overwise be subject to federal registration and SRO oversight would not fall through the cracks completely. Given previous recommendations to coordinate and previous communications with the staff on this issue, state securities regulators are surprised to the point of alarm; the Commission gave no clear signal that it was considering abandoning regulation in this area.

Fortunately, some states have developed regulatory solutions for finders. California and Texas have adopted securities laws or rules defining finders and requiring them to register as such.[20] Registered finders are permitted to engage in a limited scope of brokerage activities (such as those contemplated for Tier II finders in the Proposal), but are subject to specific state finder regulations.[21] Michigan has also implemented a regulatory regime for finders,[22] and New York is in the process of doing so.[23]

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[17] Letter from SEC Small Business Advisory Committee to Hon. Mary Jo White, at 4 (Sept. 23, 2015), *available at* https://www.sec.gov/info/smallbus/acsec/acsec-recommendations-regulation-of-finders.pdf.

[18] Letter from SEC Small Business Advisory Committee to Hon. Jay Clayton (May 15, 2017), *available at* https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-051517-finders.pdf.

[19] U.S. Department of the Treasury, *A Financial System that Creates Economic Opportunities: Capital Markets* (Oct. 2017) at 44, *available at* https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf.

[20] Cal. Corp. Code § 25206.1; Tex. Admin. Code tit.7 §§ 115.1(a)(9), 115.11

[21] Cal. Code Regs. tit. 10 §§ 260.211.4 – 260.211.7; Tex. Admin. Code tit.7 § 115.11.

[22] Mich. Comp. L. §§ 451.2102(i), 451.2413; Mich. Admin. Code § 451.1.2.

[23] *See* Press Release, *Attorney General James Moves to Modernize and Streamline Securities Filings in NYS* (Apr. 6, 2020), *available at* https://ag.ny.gov/press-release/2020/attorney-general-james-moves-modernize-and-streamline-securities-filings-nys.

Given that previous efforts recommended coordination with other regulators, NASAA asks the SEC to engage with state securities regulators and SROs to consider other regulatory approaches before it creates safe harbors to withdraw federal oversight. Indeed, in a recent meeting the SEC's Small Business Capital Formation Advisory Committee (the "SBCFAC") expressed concerns with the Proposal and recommended to the Commission that relief for finders should be coordinated with the states.[24]

D. The Proposal Is Flawed Because Its Limits Would Be Ineffective.

1. The Accredited Investor Limitation Would Not Protect Retail Investors.

The Commission proposes to limit finder solicitations to persons they reasonably believe are accredited investors "to *ensure* that Finders solicit only potential investors who have a sufficient level of financial sophistication to participate in investment opportunities."[25] This limitation would do little to protect retail investors.

NASAA has commented previously that the current income and net worth criteria for accredited investors are insufficient because they include persons who have reached accredited status through a lifetime of savings and asset accumulation.[26] The value of these thresholds has also weakened over 38 years of Commission inaction to address the eroding effects of inflation, resulting in further doubt as to their efficacy in measuring financial sophistication. The Commission itself recognizes that these tests are a "proxy" for financial sophistication,[27] and it has stated that "the concept of financial sophistication encompasses not only an ability to analyze the risks and rewards of an investment but also the capacity to allocate investments in a way to mitigate or avoid risks of unsustainable loss."[28] More candidly, the Commission staff has recognized that

> "While there is academic literature showing correlation between wealth and financial sophistication, concerns have been expressed that the pool of accredited investors may include individuals that are wealthy but financially unsophisticated; and that not all such investors may adequately understand the risk-reward tradeoffs

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[24] A webcast of the November 9, 2020 meeting is available at https://www.sec.gov/video/webcast-archive-player.shtml?document_id=sbcfac110920.

[25] Proposal at 20 (emphasis added).

[26] *See* Letter from NASAA President Christopher Gerold to Vanessa Countryman, *Re: File No. S7-25-19: Amending the "Accredited Investor" Definition* (Mar. 16, 2020) at 6, *available at* https://www.sec.gov/comments/s7-25-19/s72519-6960323-212740.pdf.

[27] *Amending the "Accredited Investor" Definition*, SEC Rel. No. 33-10734 (Dec. 18, 2019) at 21, *available at* https://www.sec.gov/rules/proposed/2019/33-10734.pdf.

[28] *Id.* at 22.

> of investing in unregistered securities offerings that do not undergo both the Commission and a market review process."[29]

NASAA has likewise consistently pointed out that there is no reason to believe that the income and net worth thresholds provide investors with these skills, and they cannot ensure that accredited investors are financially sophisticated. Accordingly, limiting finders to soliciting persons they reasonably believe are accredited investors is not sufficient to protect unsophisticated retail investors.

2. Without Examination or Recordkeeping Requirements, There Is No Way to Determine If a Finder Acts in Accordance with the Proposal's Limitations.

The Proposal's limitations on what finders can say to investors is not workable. There is no way to police whether a finder makes a recommendation. Because they would not be examined, finders would not be subject to scrutiny until they had harmed investors.[30] As it stands now, a broker-dealer representative can be subject to discipline for a myriad of failures short of fraud. Investors are protected by that oversight, both because regulators can correct less severe failings and find persons whose shortcomings (such as recordkeeping failures) are precursors to fraud. The Proposal would abandon the benefits of periodic oversight.

3. The Proposal Is Too Vague to Enforce.

While the Proposal seeks to draw a line between information sharing and recommendation, it fails to do so in a way that sets clear standards that would be understood by a finder or subject to enforcement if violated. For instance, the Proposal would allow finders not only to provide issuer information to investors, but to discuss it with them.[31] Given that a finder would be empowered to explain an issuer's disclosures, it is likely that the finder would emphasize those disclosures that paint the issuer in the best light. Given the pull of transaction-based compensation, and no clear lines on communication limits, it is virtually certain that finders would make recommendations to investors.

The proposed exemption is also too vague because it defines safe harbors but does not define the limits of the proposed exemption. The Proposal instead states that if a person does not meet the terms of the safe harbor, that person does not necessarily need to register, but would need to be evaluated on the basis of facts and circumstances.[32] This lack of specificity undermines the ability of enforcement staff to investigate and to recommend and pursue enforcement actions. Further, as Commissioners Lee and Crenshaw have noted in their dissents, the Proposal would

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[29] DERA Study at 8.

[30] Members of the SBCFAC endorsed a notice filing requirement for finders during their November 9th meeting in order to provide data on the industry and to deter bad actors. Importantly, Chairman Clayton seemed to endorse those themes in his remarks when he said that a disclosure requirement would have a "self-regulatory effect," which he said the Commission should strive for in small business regulation to reduce compliance costs.

[31] See Proposal at 24.

[32] See *id.* at 17.

undermine longstanding staff interpretations about when broker-dealer registration is required,[33] and would obviate important broker-dealer obligations that should apply to finders.[34] If the Commission proceeds with this ill-advised order, it should at least make clear that a person who does not observe the Proposal's safe harbor limitations should be presumed to be required to register.

E. The Commission's Rushed Process Threatens Investor Protection.

Like other commenters, NASAA is concerned that the Commission proposes to grant such a significant exemption through an order. This lack of process cannot be squared with the Commission's obligation to protect investors. Implementing the Proposal by order rather than through a rulemaking process means that the public – and the SEC itself – will not have a proper opportunity to assess regulatory costs and benefits. Further, the 30-day comment period does not give commenters sufficient time to consider the issue and respond in depth.[35]

III. The Proposal Is Not Designed to Achieve the Commission's Purported Goals.

The Commission justifies the proposed exemption by suggesting that it might facilitate fundraising in regions of the country that lack strong capital raising networks, or that it might enhance opportunities for minority- and women-owned businesses.[36] The Proposal also refers repeatedly to the needs of small businesses.[37] Yet, even assuming *arguendo* that these rationales support exempting finders from registration, they should be viewed skeptically here because the Proposal is not designed to achieve them. The Proposal does not limit the size, location, or nature of the issuers that can work with finders, nor does it limit the amount of compensation that finders can receive. As proposed, the only factor that would motivate finders to pursue one opportunity over another would be the compensation offered by the issuer. There is therefore no reason to believe that the Proposal would help capital flow to underserved areas or particular issuers.

However, NASAA does not believe that finders should be exempted only if they work with companies of certain sizes or characteristics. Rather, NASAA believes that finders should be registered regardless of who they work for, and unsupported rationales should not serve to justify extraordinary exemptions. This approach is better because it would benefit investors who may be interested in exploring private market opportunities, as well as issuers seeking needed capital.

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[33] Allison Herren Lee, *Public Statement, Regulating in the Dark: What We Don't Know About Finders Can Hurt Us* (Oct. 7, 2020), *available at* https://www.sec.gov/news/public-statement/lee-proposed-finders-exemption-2020-10-07.

[34] Caroline A. Crenshaw, *Public Statement, Statement on Proposed Exemptive Relief for Finders* (Oct. 7, 2020), *available at* https://www.sec.gov/news/public-statement/crenshaw-finders-2020-10-07.

[35] This is another reason a more formal rulemaking would be warranted here; if the Commission were proceeding through a rule proposal, the public would have at least 60 days to respond.

[36] See Proposal at 4-5.

[37] See *id.* at 19, 21.

Just as important, the Proposal does not appreciate the possibility that freeing finders from oversight could harm small business capital formation. Members of the SBCFAC were quick to identify scenarios where finders could harm issuers and sour investors. One member described an illegal general solicitation email that her client received from an untrained real estate agent acting as a finder, and she noted that the offer would have been subject to rescission. This example clearly demonstrates the danger that finders – acting without control, oversight, or training in offering exemption requirements – would be susceptible to making errors that harm investors and issuers. Another member raised the possibility that the exemption would spawn businesses that simply sell names. Still another worried about finders spamming potential investors. Another common theme among the committee members was a concern that the lack of compensation limits could lead to abuses, such as fee gouging. In sum, there are easily identified reasons for the Commission to be concerned that the Proposal could result in abuses that would make small issuers wary of finders, and therefore reticent to use the very facility the Commission created for them.

The only answer to these concerns is well-constructed regulation, crafted by experienced regulators, that addresses the possibility of abuse seriously. The Proposal fails because it does not.

IV. If the Commission Declines to Withdraw the Proposal, It Should Implement Stricter Limitations.

The Commission should withdraw this proposal for the reasons described above, and if it decides to move forward on this issue in the future, it should do so through a collaborative rulemaking process that includes a full cost-benefit analysis. That is the only appropriate approach for such a significant change. However, if the Commission chooses to implement an exemptive order now it should, at a minimum, make the following changes.

First, finders should be required to conduct due diligence on the issuers they promote. The proposed requirement that finders should not conduct due diligence emanates from the Paul Anka no action letter.[38] The staff opinion in that matter was for a special circumstance that should not be made applicable generally. It appears that the no due diligence condition was suggested by Mr. Anka's counsel to justify his single act of finding. The Proposal, however, contemplates that Tier II finders could make a career out of finding. That is a qualitatively different circumstance in which a finder would repeatedly expose investors to risks.[39] While NASAA believes that all finders should be registered and made subject to a standard of conduct, we particularly believe that a finder should be obligated to evaluate an issuer's bona fides before soliciting investors. As proposed, a finder could absolve himself or herself from responsibility for facilitating a fraud by claiming that the Commission prohibited the finder from engaging in due diligence. That would be an illogical and unintended result.

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[38] SEC No-Action Letter, *Paul Anka*, Fed. Sec. L. Rep. P 79,797 (1991), 1991 WL 176891.

[39] Members of the SBCFAC repeatedly observed during their November 9th call that Tier II finders should be treated more like broker-dealers, subject to such things as recordkeeping requirements and examination.

Second, the exemption should apply only to natural persons.[40] Permitting entities to qualify as finders would open the door to abuse by boiler rooms or similar fraudsters who would use the exemption as a veneer of legitimacy for their misconduct.

Third, only U.S. residents should be allowed to be exempted.[41] Given that antifraud provisions would be the sole federal remedy for finder misconduct, the Commission should at least ensure that finders are within the reach of U.S. enforcement.

Fourth, finders should be limited to primary offerings.[42] Promoting secondary sales, including insider sales, has nothing to do with the capital formation goals behind the Proposal.

Fifth, the exemption should define the conflicts of interest that a finder would be required to disclose. Disclosure requirements should not be left to self-interested subjective interpretation.

Sixth, finders should be more clearly prohibited from conducting general solicitation by being required to solicit only persons with whom they have a substantial, pre-existing relationship, rather than one that comes about though social-media posts and the like. SBCFAC members who considered the use cases for finders seemed most comfortable with persons who reached out to their existing contacts to help a local business, and least comfortable with persons who made a business out of finding investors who they did not know previously.

Seventh, the written disclosures currently proposed must be clarified and strengthened. For instance, an exemptive order should make clear that the finder must disclose: the amount of compensation he or she is receiving from an issuer, regardless of the form; any relationship or affiliation with any officer or director of the issuer; and, any prior regulatory or disciplinary action taken against the finder by a financial regulator.

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40 See Proposal at 31, Question 3.

41 *See id.*, Question 4.

42 *See id.* at 32, Question 15.

V. Conclusion

For the reasons described above, NASAA opposes the Proposal because it would harm investors by withdrawing regulatory oversight and professional controls from persons and situations known to be prone to abuse. NASAA also believes that the limited controls proposed would be inadequate because they cannot ensure that finders would solicit sophisticated investors only, they are too vague to enforce, they cannot be monitored for compliance, and they are susceptible to abusive practices that could harm small business capital formation.

We therefore reiterate our request that the SEC not move forward with this Proposal. If the agency does elect to advance this regulatory initiative, we request that it do so through formal rulemaking that reflects engagement with the states, SROs, and other stakeholders to determine an appropriate regulatory framework that would provide finders with clarity while establishing necessary investor safeguards.

Thank you for considering these views. We look forward to continuing to work with the Commission on our shared mission of protecting investors. Should you have questions, please contact NASAA's Executive Director, Joseph Brady, or General Counsel, Vince Martinez, at (202) 737-0900.

Sincerely,

Lisa Hopkins
NASAA President
General Counsel and Senior Deputy
Commissioner of Securities, West Virginia