From:	Linda Lerner
To:	Comments, Public
Cc:	Sheirer, Joseph; Colby, Robert
Subject:	Comments on Regulatory Notice 25-06
Date:	Thursday, June 19, 2025 8:58:17 PM
Attachments:	SEC Finders Proposal Response.docx BILLS-118hr2590ih.docx
Importance:	High

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June 19, 2025

Re: Comments on FINRA Regulatory Notice 25-06

Ladies and Gentlemen:

The undersigned are writing to comment on FINRA Regulatory Notice 25-06 and, in particular, on the request for comments on the regulation of "finders." The undersigned have been involved in the finder issue as part of their practice of law and, for most, for well over two decades through their participation in the Task Force on Private Placement Brokers of the American Bar Association's Business Law Section (the "Task Force"). For the avoidance of doubt, the term finders, as used herein, includes both individuals and firms acting in such capacity.

The History:
The Task Force published its Report and Recommendations on June 20, 2005. At the request of the Securities and Exchange Commission (the "SEC"), on August 18, 2006, certain members of the Task Force submitted to Robert Colby and Catherine McGuire, Acting Director and Chief Counsel, respectively, of the SEC's Division of Market Regulation, proposed amendments to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which amendments would govern the exemption from or limitation on registration requirements for and regulation of finders.
In 2013 several of the undersigned and others submitted a request for No-Action to the SEC with respect to merger and acquisition brokers ("M&A Brokers"), and relief was granted by the Division of Trading and Markets on February 4, 2014. In 2022, Congress amended the Exchange Act by adding a statutory exemption from federal broker-dealer registration in a new subsection 15(b)(13) and, concurrent with the amendment's effective date, March 29, 2023, the M&A Brokers No-Action Letter was withdrawn by the SEC. In 2015 the North American Securities Administrators Association approved a model state rule creating a state-level registration exemption, the M&A Broker Model Rule, which was then updated in 2024 to align with the federal registration exemption. To date, state-level exemptive relief for M&A Brokers has been issued by 23 states.

For a number of years, over numerous Congressional sessions, members of Congress have introduced proposed legislation for finders setting forth a two-tier structure and the House of Representatives has approved such legislation. Several of the undersigned were requested to provide responses to questions of Congressional staff regarding the proposed legislation and did so. See, for example, the legislation first proposed by now Senator Budd in 2019 and most recently

proposed, and slightly revised, in 2023 by Representative Garbarino (the "Finders Bill"). A copy of the Finders Bill is attached hereto.

On November 12, 2020, in response to the SEC's 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 (Release No. 34-90112; File No. S7-13-20) (the "Notice"), most of the undersigned, in their respective individual capacity, submitted their comments on the Notice (the "Comments"). A copy of those Comments is appended hereto.

As far back as July 2015, the SEC's Advisory Committee on Small and Emerging Companies (and subsequently, the SEC's Small Business Capital Formation Advisory Committee), has included in its recommendations (most often in its priority recommendations) that the finders issue be clarified. Going back as far as 2006, the Annual SEC Government-Business Forum on Small Business Capital Formation has made similar recommendations.

The Current Situation:

M&A Brokers, a specific subset of finders, have been granted statutory relief from SEC registration. That registration exemption permits limited corporate capital-raising activities under prescribed conditions. Outside of this narrow exception, finders who help business owners raise capital remain unable to do so legally except under extremely narrow and fact-dependent circumstances, although there are cases that have upheld the legality of activities of finders, such as *SEC v. Kramer* (778 F. Supp. 2d 1320, MD Fla. 2011). A simple internet search reveals that thousands of finders openly provide these services in every jurisdiction, and, we believe, tens of thousands more on a more casual basis. When cautioned by counsel, finders frequently respond that everyone does it, and they are, in the main, correct. As experienced securities law practitioners and, in some cases, former securities regulators, we believe this widespread disregard for the law should be addressed. A practical regulatory regime for finders would allow these intermediaries to perform their valuable and productive services in connection with securities transactions "in the sunshine." This would protect the public by identifying the bad actors who do not adhere to the regulations and benefit capital formation in the U.S., which the SEC and FINRA were formed to foster.

State regulators, who historically have strongly opposed any relief for capital formation brokers that does not involve traditional registration, enforce state registration requirements only infrequently, outside of bringing enforcement actions against finders when defrauded investors have complained to them, in part because they do not have adequate financial or human resources to locate and regulate these finders. Likewise, FINRA and the SEC also are constrained by budgetary and staff resource limitations from attempting to regulate finders, many of whom only occasionally act in this capacity. We support the guard rails on finders' activities enumerated in the Finders Bill, which can enhance investor protection, as well as enforcement activities by federal and state regulators in cases of fraudulent activity.

As to the finders, the cost to register a firm with the SEC and become a FINRA member generally ranges from at least $75,000 to over $100,000. FINRA's new membership application process, qualification exams, and continuing education requirements are extensive, expensive, and largely beyond the limited scope of activities performed by a finder. Ongoing full compliance with the current requirements is impractical, given the cost of PCAOB accountants and other compliance expenses required in connection with the $5,000 net capital requirement, which capital

requirement, in any case, provides little financial protection for aggrieved investors.

Summary of Recommendations:

The undersigned (we note the untimely passing of Valentino Vasi and the unavailability of Edward Eisert and the welcome addition of Gerald Niesar, who has carried the flag on this issue from the beginning) reaffirm the recommendations and comments made in the Comments and urge FINRA to finally bring clarity to the finders issue and with that clarity, the benefits to capital formation and the ability to participate in the growth of emerging businesses and the job creation they foster. We emphasize that the notice requirements set forth in the Finders Bill would provide regulators, including state regulators, with a valuable tool to identify and supervise the activities of finders. We encourage FINRA to review the provisions of the Finders Bill, which embodies many of the recommendations made in the Comments, as well as the SEC's Notice. We also encourage FINRA to coordinate with the SEC to clarify and codify these important matters of shared regulatory interest.

Respectfully,

Linda Lerner
Martin Hewitt
Richard Alvarez
Faith Colish
Michael Halloran
Shane B. Hansen
Mark Hobson
Gerald V. Niesar
Bonnie Roe
Gregory C. Yadley

November 12, 2020

Submitted via email to: rule-comments@sec.gov

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

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 (Release No. 3490112; File No. S7-13-20)

Dear Ms. Countryman:

We congratulate the Commission for addressing the issue of finders ("Finders") in the proposed exemptive order referenced above (the "Proposed Order"). The signatories to this comment letter have been deeply involved in the "Finders" issue for many years. Our views on the regulation of Finders have been developed through many discussions among ourselves and other attorneys who have focused on the Finder issue, as well as with federal and state regulators and elected officials. At this time of severe economic distress in the United States, any step that the Commission takes to renew our economy and get our businesses open and profitable, especially for those entrepreneurs most in need of access to capital, is deserving of support. While one of the Commission's missions is to protect investors, an equally important mission is to facilitate capital formation. These two critical missions should work hand in hand; they do not represent opposing values and this should not be reduced to a binary choice.

Each of the signatories to this comment letter is signing in his or her individual capacity and not as member of any organization or firm with which such signatory is associated. Each of the signatories has indicated substantial agreement with the comments contained herein.

We are specifically commenting on Items 6 and 7 of the Proposed Order.

6. ***Have we appropriately limited the types of investors whom a Finder can "find" or solicit? Instead of limiting potential investors to those the Finder reasonably believes are accredited investors, should investors identified by***

Finders be subject to investment limitations, regardless of the exemption being relied upon, such as a dollar limit on the size of the investment? If so, please specify.

While believing that the "accredited investor" qualification is an appropriate basis for the Proposed Order's exemptive relief, particularly as that definition has recently been expanded, we also encourage the Commission to consider, either now or at a future time, a path for Finders to identify members of their communities who are not accredited investors who may on a limited basis wish to invest in local entrepreneurs, much as they can accomplish under Reg CF, Crowdfunding, perhaps by cross-referencing those qualifications and limitations.

For a long time we have, when discussing Finders, used the example of the country club casual introduction, albeit for a fee. However, limiting Finders to finding or soliciting only accredited investors could be interpreted by some as failing to recognize the needs of underserved entrepreneurs including, but not limited to, minorities, women and persons living in areas that are lower income and/or more rural areas that may have been overlooked by traditional investment bankers. In these communities, the entrepreneur's potential investor pool may consist in substantial part of customers or clients of the entrepreneur who are not accredited investors but who live in the same community, know the entrepreneur well and form a network that would wish to invest in her enterprise – a community version of a country club or social/business network. If a community resident wants to invest in a neighborhood bakery, and the resident and bakery owner have known each other for years, why should he or she not be allowed to invest because that person is not an accredited investor in a case where the network is facilitated by a Finder? He or she may not meet this financial test, but they have the background and knowledge in the owner and his/her business to make an investment decision in this and similar situations.

This issue has become especially acute during the pandemic. A brief issued by the New York Federal Reserve Bank on August 4, 2020, on the effects of COVID-19 on Black entrepreneurs pointed out that Black owned businesses were substantially more likely to shutter as firms overall. From February to April 2020, Black owned businesses declined by 41 percent and Latino owned businesses declined by 32 percent. Claire Kramer Mills, assistant vice president at the New York Fed, was quoted in the New York Fed's Press Release regarding the Brief: "These firms had weaker financial cushions, weaker bank relationships, and preexisting funding gaps prior to the pandemic. COVID-19 has exacerbated these issues and businesses in the hardest hit communities have witnessed huge disparities in access to federal relief funds and a higher rate of business closures."

We believe that it would be reasonable to limit the amount a non-accredited investor could invest. Unless the investor is willing and able to provide the Finder or the

Issuer with enough verifiable financial information to calculate the investor's net worth or income in order to impose a percentage of net income or worth test, a flat dollar limit could be imposed. We suggest that $10,000 per investor might be a reasonable limit.

It is our hope that the Commission will undertake creative efforts, perhaps collaborating with other federal and state agencies, to address this issue.

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?***

We believe that it would be helpful for the Commission to consider a more nuanced and clarified definition of general solicitation for purposes of the Proposed Order. Although the general solicitation prohibition is necessary for consistency with many of the available private offering exemptions available to an issuer, not all offering exemptions and exclusions prohibit it. One example is that the intrastate offering exemption commonly available for small offerings is not dependent upon the absence of general solicitation. In those offerings, a more general solicitation—even if localized—could otherwise be permissible.

If a short notice were placed in a church bulletin regarding the possibility of investing in a community-based dog training facility, and giving the Finder's contact information, would that constitute a general solicitation? This idea is similar to relief given in certain No-Action Letters, and explicitly permitting such a limited form of solicitation could constitute a creative way to assist entrepreneurs with no access to the capital they need to start or maintain their businesses.

Moreover, the general solicitation prohibition thereby presupposes a pre-existing relationship between a Finder and a prospective investor. The very existence of such a relationship may—indeed often—imputes a level of interpersonal trust and confidence between them. As explained above, this relationship imbues an introduction, meeting, or discussion with that trust and confidence, and is readily interpreted by the investor as a recommendation, advice, or the advisability of making the investment presented.

Very truly yours,

Linda Lerner
Martin Hewitt
Richard Alvarez
Faith Colish
Edward Eisert
Michael Halloran
Shane Hansen
Mark Hobson

Bonnie Roe
Valentino Vasi

cc: Jay Clayton
Carolyn A. Crenshaw
Allison Herren Lee
Hester M. Peirce
Elad L. Roisman

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118TH CONGRESS

1ST SESSION **H. R. 2590**

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2023

Mr. GARBARINO introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Unlocking Capital for Small Businesses Act of 2023''.

SEC. 2. SAFE HARBORS FOR PRIVATE PLACEMENT BROKERS AND FINDERS.

(a) IN GENERAL.—Section 15 of the Securities Ex9 change Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following:

''(p) PRIVATE PLACEMENT BROKER SAFE HARBOR.—

''(1) REGISTRATION REQUIREMENTS.—Not later than 180 days after the date of the enactment of this subsection the Commission shall promulgate regulations with respect to private placement brokers that are no more stringent than those imposed on funding portals.

''(2) NATIONAL SECURITIES ASSOCIATIONS.—Not later than 180 days after the date of the enactment of this subsection the Commission shall promulgate regulations that require the rules of any national securities association to allow a private placement broker to become a member of such national securities association subject to reduced membership requirements consistent with this subsection.

''(3) DISCLOSURES REQUIRED.—Before effect-

ing a transaction, a private placement broker shall disclose clearly and conspicuously, in writing, to all parties to the transaction as a result of the broker's activities—

"(A) that the broker is acting as a private placement broker;

"(B) the amount of any payment or anticipated payment for services rendered as a private placement broker in connection with such transaction;

"(C) the person to whom any such payment is made; and

"(D) any beneficial interest in the issuer, direct or indirect, of the private placement broker, of a member of the immediate family of

the private placement broker, of an associated person of the private placement broker, or of a member of the immediate family of such associated person.

"(4) PRIVATE PLACEMENT BROKER DEFINED.—In this subsection, the term 'private placement broker' means a person that—

"(A) receives transaction-based compensation—

"(i) for effecting a transaction by—

"(I) introducing an issuer of securities and a buyer of such securities in connection with the sale of a business effected as the sale of securities; or

"(II) introducing an issuer of securities and a buyer of such securities in connection with the placement of

securities in transactions that are exempt from registration requirements under the Securities Act of 1933; and

''(ii) that is not with respect to—

''(I) a class of publicly traded securities;

''(II) the securities of an investment company (as defined in section 3 of the Investment Company Act of 1940); or

''(III) a variable or equity-indexed annuity or other variable or equity-indexed life insurance product;

''(B) with respect to a transaction for which such transaction-based compensation is received—

''(i) does not handle or take posses-

sion of the funds or securities; and

‘‘(ii) does not engage in an activity that requires registration as an investment adviser under State or Federal law; and

‘‘(C) is not a finder as defined under subsection (q).

‘‘(q) FINDER SAFE HARBOR.—

‘‘(1) NONREGISTRATION.—A finder is exempt from the registration requirements of this Act.

‘‘(2) NATIONAL SECURITIES ASSOCIATIONS.—A finder shall not be required to become a member of any national securities association.

‘‘(3) FINDER DEFINED.—In this subsection, the term ‘finder’ means a person described in paragraphs (A) and (B) of subsection (p)(4) that—

‘‘(A) receives transaction-based compensation of equal to or less than $500,000 in any

calendar year;

‘‘(B) receives transaction-based compensation in connection with transactions that result in a single issuer selling securities valued at equal to or less than $15 million in any calendar year;

‘‘(C) receives transaction-based compensation in connection with transactions that result in any combination of issuers selling securities valued at equal to or less than $30 million in any calendar year; or

‘‘(D) receives transaction-based compensation in connection with fewer than 16 transactions that are not part of the same offering or are otherwise unrelated in any calendar year.’’.

(b) VALIDITY OF CONTRACTS WITH REGISTERED PRIVATE PLACEMENT BROKERS AND FINDERS.—Section 5 29 of the Securities Exchange Act (15 U.S.C. 78cc) is 6 amended by adding at the end the following:

7 ''(d) Subsection (b) shall not apply to a contract 8 made for a transaction if—

9 ''(1) the transaction is one in which the issuer engaged the services of a broker or dealer that is not

11 registered under this Act with respect to such trans-

12 action;

13 ''(2) such issuer received a self-certification

14 from such broker or dealer certifying that such

15 broker or dealer is a registered private placement

16 broker under section 15(p) or a finder under section

17 15(q); and

18 ''(3) the issuer either did not know that such

19 self-certification was false or did not have a reason20 able basis to believe that such self-certification was 21 false.''.

(c) REMOVAL OF PRIVATE PLACEMENT BROKERS FROM DEFINITIONS OF BROKER.—

(1) RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS.—Section 5312 of title 31, United States Code, is amended in subsection (a)(2)(G) by inserting "with the exception of a private placement broker as defined in section 15(p)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 5 78o(p)(4))" before the semicolon at the end.

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended by adding at the 9 end the following:

"(G) PRIVATE PLACEMENT BROKERS.—A private placement broker as defined in section 15(p)(4) is not a broker for the purposes of this Act.".

SEC. 3. LIMITATIONS ON STATE LAW.

Section 15(i) of the Securities Exchange Act of 1934 16 (15 U.S.C. 78o(i)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; 19 (2) by inserting after paragraph (2) the fol20 lowing:

''(3) PRIVATE PLACEMENT BROKERS AND FINDERS.—

''(A) IN GENERAL.—No State or political 24 subdivision thereof may enforce any law, rule, regulation, or other administrative action that

imposes greater registration, audit, financial recordkeeping, or reporting requirements on a private placement broker or finder than those that are required under subsections (p) and (q), respectively.

"(B) DEFINITION OF STATE.—For purposes of this paragraph, the term 'State' includes the District of Columbia and each territory of the United States."; and

(3) in paragraph (4), as so redesignated, by striking "paragraph (3)" and inserting "paragraph (5)".

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