

**SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON
SMALL AND EMERGING COMPANIES**
Washington, DC 20549-3628

September 23, 2015

The Honorable Mary Jo White
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1070

Dear Chair White:

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 recommendations regarding the regulation of finders and other intermediaries in small business capital formation transactions. This topic was discussed at our meetings held on June 3, 2015 and July 15, 2015, and the specific recommendations, as enclosed, were voted upon and approved on September 23, 2015.

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 this recommendation.

Respectfully submitted on behalf of the Committee,

Stephen M. Graham
Committee Co-Chair

M. Christine Jacobs
Committee Co-Chair

Members of the Committee

Charles Baltic
David A. Bochnowski
John J. Borer, III
Dan Chace
Milton Chang
Stephen M. Graham
Shannon L. Greene
Sara Hanks
John Hempill
M. Christine Jacobs
Richard L. Leza**
Sonia Luna
Catherine V. Mott**
David J. Paul
Timothy Reese*
Timothy Walsh
Gregory C. Yadley

Official Observers

Michael Pieciak
Javier Saade

* Not present at the meeting held on June 3, 2015.

** Not present at the meeting held on September 23, 2015

Enclosure

cc: Commissioner Luis Aguilar
Commissioner Daniel M. Gallagher
Commissioner Kara M. Stein
Commissioner Michael S. Piwowar
Steve Luparello
Heather Seidel
Joe Furey
Joanne Rutkowski
Keith Higgins
Elizabeth Murphy
Sebastian Gomez
Julie Davis

U.S. Securities and Exchange Commission
Advisory Committee on Small and Emerging Companies

**Recommendations Regarding the Regulation of Finders and Other Intermediaries
in Small Business Capital Formation Transactions**

AFTER CONSIDERING THAT:

1. Small businesses account for the creation of two-thirds of all new jobs, and are the incubators of innovation, with the majority of new jobs in the United States created by companies less than five years old. Early stage capital for these small businesses is raised principally through offerings that qualify for exemption under the registration provisions of the Securities Act of 1933 and the “blue sky” laws of the various states.
2. More than 95% of private offerings rely on the exemptions provided by SEC Regulation D, particularly Rule 506. However, less than 15% of Regulation D offerings use a financial intermediary, such as a broker-dealer or finder. This is due, in part, to lack of interest from registered broker-dealers given the legal costs and risks involved in undertaking a small transaction, ambiguities in the definition of “broker” and the danger of using unregistered firms to identify and solicit potential investors.
3. As documented in the findings of an American Bar Association Business Law Section Task Force in 2005, recognized by the SEC Advisory Committee on Smaller Public Companies in 2006, and endorsed in the Final Reports of the Congressionally-mandated annual SEC Government-Business Forum on Small Business Capital Formation since 2006:
 - a. Failure to address the regulatory issues surrounding finders and other private placement intermediaries impedes capital formation for smaller companies,
 - b. The current broker-dealer registration system and FINRA membership process is a deterrent to meaningful oversight,
 - c. Appropriate regulation would enhance economic growth and job creation, and
 - d. Solutions are achievable through Commission leadership and coordination with FINRA and the states.
4. The Committee is of the view that imposing only limited regulatory requirements, including appropriate investor protection safeguards, on private placement intermediaries that limit their activities to specified parameters, do not hold customer funds or securities and deal only with accredited investors would enhance capital formation and promote job creation.

THE COMMITTEE RECOMMENDS THAT:

1. The Commission take steps to clarify the current ambiguity in broker-dealer regulation by determining that persons that receive transaction-based compensation solely for providing names of or introductions to prospective investors are not subject to registration as a broker under the Securities Exchange Act.
2. The Commission exempt intermediaries that are actively involved in the discussions, negotiations and structuring, as well as the solicitation of prospective investors, for private financings on a regular basis from broker registration at the federal level, conditioned upon registration as a broker under State law.
3. The Commission spearhead a joint effort with the North American Securities Administrators Association and the Financial Industry Regulatory Authority to ensure coordinated State regulation and adoption of measured regulation that is transparent, responsive to the needs of small businesses for capital, proportional to the risks to which investors in such offerings are exposed, and capable of early implementation and ongoing enforcement.
4. The Commission should take immediate intermediary steps to begin to address this set of issues incrementally instead of waiting until development of a comprehensive solution.