

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:

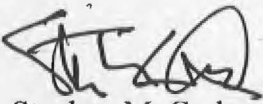
As you know, the Securities and Exchange Commission organized the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on the Commission's rules, regulations, and policies with regard to its mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, as they relate to the following:

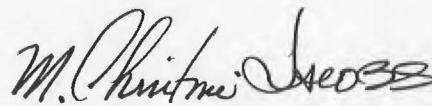
- (1) capital raising by emerging privately held small businesses and publicly traded companies with less than \$250 million in public market capitalization;
- (2) trading in the securities of such businesses and companies; and
- (3) public reporting and corporate governance requirements to which such 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 unanimously 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. Capital raised in private offerings using SEC Regulation D is large when compared to other exempt offerings and registered offerings. However, only 13% of Regulation D offerings reported using a financial intermediary, such as a broker-dealer or finder, between 2009 and 2012. 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 and ambiguities in the definition of “broker.” This void means that a number of smaller market participants rely on unregistered parties 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 issues regarding the regulation of intermediaries in small business capital formation transactions incrementally instead of waiting until development of a comprehensive solution.