



[Home](#) / [Newsroom](#) / [Speeches and Statements](#) / Remarks at the Small Business
Capital Formation Advisory Committee Meeting

STATEMENT

Remarks at the Small Business Capital Formation Advisory Committee Meeting

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July 22, 2025

Good morning. It is a pleasure, as always, to be at today's meeting of the Small Business Capital Formation Advisory Committee.

Today the Committee takes up the topic of “finders,” and their role in fundraising for private small businesses. As we’ve heard already, in 2020 the Commission proposed – but did not adopt – an exemption from broker-registration requirements for two tiers of finders operating in the private markets.^[1] The proposal effectively created new categories of unregistered, unsupervised financial professionals, who could engage in traditional brokerage solicitation activities without having to satisfy the regulatory requirements imposed on brokers.

Some in this room may recall that I opposed the proposal. I would like to reiterate some of the concerns I (and Commissioner Lee) had at the time – and I continue to have today – as you discuss this topic and consider any future recommendation.^[2]

Investor Protection Concerns

First, we checked important investor protections at the door. The 2020 proposal did not attempt to marry the finder registration exemption with

effective guardrails. If the Commission is to engage in policymaking that relaxes registration requirements on finders, then it must consider more than just the potential for issuer access to capital; due consideration must be given to the investor experience.

The 2020 proposal would have allowed finders to: contact potential investors; distribute offering materials; pitch those materials in meetings with issuers and investors; and effectively praise the benefits of that issuer (without expressly “advising” on the investment) – all in exchange for compensation premised on whether they make the sale.^[3] This is traditional broker activity.^[4]

If the Commission allows finders to engage in traditional broker activity without registration -or even with diminished regulatory responsibilities – we must build in guardrails. The 2020 proposal eschewed broker requirements under Regulation Best Interest^[5] (even though the Commission had just made clear in 2019 that Regulation Best Interest applies to accredited investors);^[6] it also sidelined books and records, basic sales practice, and examination requirements, among other things.^[7] The proposal did not even require finders to notify the Commission of their intent to utilize the exemption. Finders were essentially carved out of our registration regime without any mechanism for us to review whether they were complying with the requirements of the safe harbor, or to evaluate the success of the program.

The need for guardrails is important as the Commission considers expanding access to the opaque private markets, whose securities are less liquid, bear higher transaction costs, and whose valuation practices are less consistent (to name a few potential issues).

But, perhaps more importantly, the need for protections is even greater in this finders’ space which – again and again – has proven itself susceptible to microcap fraud, pump-and-dumps, front-end-fee scams, and other manipulative activity.^[8] Indeed, experts have noted that the enforcement actions and litigations exposing finder-related fraud likely represent only “the tip of the iceberg.”^[9]

This cannot be an unprotected space.

Further, any effort to limit oversight to anti-fraud provisions – as was proposed in 2020 – would be a mistake. We cannot strip ourselves of the tools required to detect fraud in the first place, such as examination or books and records requirements. Without these protections, I fear fraud will either go

undiscovered or only exposed when investor funds are too far gone to be recovered.

The Importance of Empirical Analysis

Second, any Commission action in this arena should be done through notice-and-comment rulemaking – including an economic analysis that explores the impact that any proposal will have on efficiency, competition and capital formation based on empirical data. It should also include a fulsome historical perspective on the success and usefulness of finders to date. Empirical, data-driven analysis will allow for more nuanced policy-making that – to the first point – allows us to better tailor any potential expansion in finder activity with appropriately calibrated investor and market protections.

And...Regulatory Purpose

Third, and relatedly, the data we look at as part of any rulemaking should reflect the difference between mere capital raising and actual capital formation. As I was refreshing myself on the 2020 proposal, I was reminded of something that former Commissioner Luis Aguilar said about capital formation, which is of course one of the pillars of our mission. “Capital formation,” he said, “is much more than just capital raising. By itself, selling a bond or a share of stock doesn’t add a thing to the real economy, no matter how quickly or cheaply you do it. True capital formation requires that the capital raised be invested in productive assets -like a factory, store or new technology –or otherwise used to make a business more productive. The more productive those assets are, the greater the capital formation from the investment –and, importantly, the more jobs created.”^[10]

I hope you keep this in mind as you think about capital formation today. Will relaxing the regulations around finders in fact ease burdens of true, meaningful capital formation?

Thank you in advance for your always-thoughtful deliberations. I look forward to today’s insights.

[1] 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 (<https://www.sec.gov/files/rules/exorders/2020/34-90112.pdf>), Rel. No. 34-90112 (Oct. 7, 2020) (“Proposed Order”).

[2] See Commissioner Caroline A. Crenshaw, Statement on Proposed Exemptive Relief for Finders (<https://www.sec.gov/newsroom/speeches-statements/crenshaw-finders-2020-10-07>) (Oct. 7, 2020) (“Crenshaw Statement”); see also Commissioner Allison Herren Lee, Regulating in the Dark: What We Don’t Know About Finders Can Hurt Us (<https://www.sec.gov/newsroom/speeches-statements/lee-proposed-finders-exemption-2020-10-07>) (Oct. 7, 2020) (“Lee Statement”).

[3] Proposed Order at 23-24.

[4] See Proposed Order at 11-12 (stating that the courts and the Commission have identified “actively soliciting or recruiting investors” and “receiving commissions, transaction-based compensation or payment other than a salary for selling the investments” as indicators of broker status); NASAA, Legislative Agenda for the 116th Congress (Mar. 5, 2010) at 5 (“The securities laws correctly recognize that individuals who receive compensation directly tied to the sale of securities are functioning as securities brokers, regardless of any actual or apparent differences in the services or functions performed by particular securities salespersons and promoters.”).

[5] Proposed Order at 26 n. 87 (“A Tier I Finder or Tier II Finder that complies with the requirements of the proposed exemption would not be subject to broker-dealer sales practice rules, including Regulation Best Interest.”).

[6] See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 at 113 (June 5, 2019) (“[W]e believe conflicted recommendations can also result in harm to high net-worth individuals. We believe the benefits of Regulation Best Interest justify compliance costs as these individuals could benefit from the protections included in Regulation Best Interest regardless of their net worth, which may not necessarily correlate to a particular level of financial sophistication.”).

[7] See Crenshaw Statement; Lee Statement.

[8] See, e.g., Advisory Committee on Small and Emerging Business, Notable by Their Absence: Finders and Other Financial Intermediaries in Small Business Capital Formation (<https://www.sec.gov/info/smallbus/acsec/finders-and-other-financial-intermediaries-yadley.pdf>), (June 3, 2015) (stating that, in many cases, “persons acting as finders represent ‘the dark side’ of the securities business: purveyors of fraudulent shell corporations; front-end fee con artists; purported

Regulation S specialists who send stock off-shore and wait to dump it back into the U.S. through unscrupulous brokerage firms or representatives who are receiving under-the-table payments for promoting stocks and micro-cap manipulators.”); American Bar Association, Report and Recommendations of the Task Force on Private Placement Broker-Dealers (<https://www.sec.gov/info/smallbus/2009gbforum/abareport062005.pdf>) at 13 (June 20, 2005) (“ABA Report”) (noting that the SEC brings “dozens” of cases annually involving fraudulent activity by finders, that state regulators bring “well over 100,” and that these cases are likely “the tip of the iceberg”); see also Jean Eaglesham and Coulter Jones, Firms With Troubled Brokers Are Often Behind Sales of Private Stakes (<https://on.wsj.com/2Mnkf8t>), Wall Street Journal (Jun. 24, 2018); Eaglesham and Jones, Regulators Step Up Scrutiny of Sales of Private Stakes (<https://on.wsj.com/2n8uLlg>), Wall Street Journal (Jul. 2, 2018); Eaglesham and Jones, A Private-Market Deal Gone Bad: Sketchy Brokers, Bilked Seniors and a Cosmetologist (<https://on.wsj.com/2lEZ34Y>), Wall Street Journal (May 7, 2018). See generally *SEC v. Raymon Pirrello, Jr., et al.*, 23-cv-8953 (E.D.N.Y. 2023) (alleging scheme by 5 unregistered broker and four companies resulting in more than \$525 million in unregistered offerings); *SEC v. Brook Church-Koegel, et al.*, No. 1:20-cv-21001 at 2 (S.D. Fla. 2020) (as part of a Ponzi scheme, three unregistered brokers were “responsible for raising... approximately \$444 million between June 2014 and December 2017, from thousands of investors in more than 40 states...in unregistered transactions”).

[9] ABA Report at 13.

[10] SEC Commissioner Luis Aguilar, Capital Formation from the Investor’s Perspective (<https://www.sec.gov/newsroom/speeches-statements/2012-spch120312laa.htm>) (Dec. 3, 2012).

Last Reviewed or Updated: July 22, 2025