

Public Statement

Statement at Open Meeting on Proposed Exemptive Order for Certain Activities of Finders



Commissioner Hester M. Peirce

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Eddie Van Halen's expert, ebullient guitar-playing is an indelible part of the soundtrack of my youth. One of the things he was known for is making up his own way of playing; he was not following any set playbook; he figured out what worked and did that. He even made his own guitars when the ones available to him did not do what he needed them to do.^[1]

Thank you, Mr. Chairman, Brett, and the Division of Trading and Markets for recognizing that this make-up-your-own-path approach works better for rock 'n' roll than it does for finders. Until now, an ad hoc approach—one based on gut-feeling and guideposts gleaned from no-action letters and enforcement actions—is the approach we have been forcing small businesses and finders to take because we have not provided a framework. The result has been bad for well-intentioned investors, businesses, and finders. Despite a consistent chorus of requests from the small business community for a sensible rule set over the last two decades, the Commission has not responded with a systematic approach until today.^[2] We are finally proposing to provide clear guidelines. The proposal addresses the concern summarized by the SEC's Office of the Advocate for Small Business Capital Formation that "small businesses and their investors need clarity on what role finders can play in providing services that fall short of requiring registration as a broker-dealer."^[3]

Today's proposal provides a framework for finders to engage in certain limited activities without registering as brokers. Finders provide a discrete but important role in facilitating capital formation for certain smaller issuers: they make connections between small businesses and people who might want to invest in them. The need for finders is particularly acute for early-stage small businesses, which often struggle to find cost-efficient ways to raise funds from people outside of their immediate friends and family group. Securing venture capital financing or enlisting the participation of a registered broker-dealer is not a realistic possibility for companies seeking to raise relatively small sums, so many issuers naturally turn to people with large rolodexes within their local communities.

While it is easy to forget in this pandemic-induced virtual setting, networking is normal and healthy economic and social behavior. Under our current law, however, this behavior can easily get people in trouble. Broker-dealer registration is not appropriate for such limited conduct, but sensible guideposts that protect investors are. The proposed order seeks to strike an appropriate balance; it permits the identification of potential investors and, in the case of Tier 2 Finders, limited engagement with the potential investors about the issuer and offering. Investor

protection concerns are addressed through the rigorous application of the antifraud provisions of the federal securities laws and the requirement that certain disclosures be provided to potential investors by Tier 2 Finders.

I am eager to hear the public's thoughts on the proposal. In particular, I am cognizant of the fact that this order addresses only a narrow subset of finders activity and that finders may be able to facilitate capital formation in other contexts that may benefit from a Commission framework. For example, should the scope of the proposed exemption be expanded to secondary offerings? Is Commission guidance needed regarding activities of private fund advisers, M&A brokers, or real estate brokers? I look forward to your comments on the proposal.

Thank you to the Chairman, the staff of the Division of Trading and Markets, the Office of General Counsel and others throughout the Commission for your efforts in developing this proposal. A special thanks to the Office of the Advocate for Small Business Capital Formation for distilling what we are proposing today into an overview chart that will facilitate feedback. Finally, thank you to the many people outside the Commission who have reminded me over the past couple years of the importance of developing a sensible framework for finders.

[1] Interview with Eddie Van Halen: Is Rock 'n' Roll All About Reinvention?, The Smithsonian's National Museum of American History and Zocalo Public Square, *available at* <https://www.youtube.com/watch?v=yb26D8bBZB8>.

[2] See 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 at notes 21-25 detailing decades of recommendations relating to finders by the SEC's annual Government-Business Forum on Small Business Capital Formation, SEC Small Business Capital Formation Advisory Committee, and the former SEC Advisory Committee on Small and Emerging Companies.

[3] SEC Office of the Advocate for Small Business Capital Formation, 2019 Annual Report, at 43, *available at* https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf.