On behalf of The ABA Private Placement Broker Task Force (the "Task Force"), and in response to your request for written statements pursuant to SEC Release Nos. 33-9325; 34-67038 File No. 265-27, attached please find a pdf outline relating to Private Placement Brokers (the "Outline") ("Private Placement Brokers," "Finders," and "Securities Intermediaries" are used synonymously herein). The Outline has previously been presented to David W. Blass, Chief Counsel, Division of Trading and Markets during a meeting between SEC staff and certain Task Force members on April 26, 2012.

In our April 26, 2012 meeting, the SEC indicated that it might be receptive to our proposal for a federal exemption for Finders, conditioned on a state registration regime. Further, the SEC indicated a willingness to allow state registered Finders to be compensated by registered FINRA Members. However, the SEC cautioned that it did not seem prudent to include such Finders in the private investment fund context.

Our Task Force shares the goal of the JOBS Act, which is to promote capital raising and job creation for small businesses. We believe that our proposal accomplishes this end and also enhances investor protection while creating a funding mechanism for the states to regulate activities of Finders engaged in capital formation in their jurisdictions.

Finally, the Task Force welcomes the opportunity to participate in the upcoming open meeting of The Securities and Exchange Commission Advisory Committee on Small and Emerging Markets this coming Friday, June 8, 2012 at 9:00 AM.

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ISSUES FOR DISCUSSION WITH THE SEC REGARDING SECURITIES INTERMEDIARIES

I. Mission Statement

A. We are proposing that an exemption from broker registration under Section 15 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), be available for "Securities Intermediaries" registered with a state securities regulatory authority.

B. State registration is expected to encourage currently unregistered "finders" to become registered and operate legally, and will:

- provide a lawful method for small businesses, which may not have access to traditional investment banks, to raise capital with the assistance of a professional;
- protect participants from regulatory enforcement actions, claims for rescission based on "voidness" due to illegality under Section 29(b) of the Exchange Act and/or rescission required under analogous state laws;
- provide protection to issuers and investors from "bad actors;"
- increase transparency and the ability of regulators to know what is going on in what is now largely a *de facto* unregulated industry;
- provide assistance to small businesses, leading to job creation; and
- provide funding through state registration and examination fees, without requiring any taxpayer subsidy.

II. Covered Persons

A. We have designated covered persons as "Securities Intermediaries" ("SIs"). We believe this term more accurately describes a broader range of activities than "private placement broker" or "finder," and avoids potentially negative connotations of the term "finder."

B. This proposal does not encompass M&A intermediaries based on our understanding that there is separate legislation and/or regulatory action being proposed to address that activity.

III. SEC Exemption – Permissible Activities

A. Criteria for Federal Exemption:

1. Activities covered by an exemptive rule (the "Rule") would fall into two categories, both of which could include receipt of transaction-based compensation ("success fees") contingent on the occurrence of a transaction:

- activities in which the sole intermediary would be the exempt SI, including arranging for the purchase and sale of securities in private placements, and related due diligence, structuring, valuation, negotiation, and assistance in obtaining financing; and

- acting as a finder between an issuer or selling shareholder and a FINRA-member, SEC-registered broker-dealer for any type of transaction, including private placements or public offerings, but where the SI's only function is to introduce the investment banking client or other transaction participant to the registered broker-dealer. Although this goes beyond the original concept of the ABA Task Force Report, we believe it is a natural and logical extension, which appropriately limits the role of the SI while ensuring the involvement of an SEC-registered broker-dealer subject to FINRA oversight.

2. Success fees can be in the form of cash, securities or other consideration.

3. We have concluded that the Rule should remain silent as to any limitation on the number of registered agents an SI can have to qualify for the exemption from Exchange Act registration. The Rule should contemplate two levels of state registration, for the SI entity and for the agents of the SI. We also suggest that there should be a separate category for individual or sole proprietor SIs.

4. We solicit the views of the SEC staff on the question of whether there should be a limit on the aggregate number or aggregate dollar value of transactions per year to qualify for the exemption from Section 15 registration. This relates to the lack of clarity about what it means to be "engaged in the business of" effecting securities transactions and the fact that "regularity" of the activity is one of the factors considered in assessing whether someone is engaged in the business.

5. With respect to setting limits on the size of a transaction or issuer, we remain committed to the original mission of the ABA Task Force on Private Placement Brokers to facilitate capital raising by small issuers who are frequently unable to attract the interest of registered broker-dealers. However, that leaves open the question of what is a "small" business in this context.

    - The JOBS Act classifies "emerging growth companies" as those with annual revenues of less than $1 billion. Is this a proper criterion for exemption from SEC broker registration?

- Is the SBA definition adopted in Country Business useful? The standards are difficult to identify and apply and may not be relevant for this purpose.

- Would Hart Scott Rodino transaction or issuer size standards, which are adjusted each year, be a better measurement or are they not relevant? The current HSR transaction/issuer size threshold is $68.2 million.

IV. State Registration

The concept of an exemption from SEC registration is coupled with the existence of appropriate regulation at the state level.[1] Some of the issues relating to the state regulatory response are listed here. In addition, it is up to the SEC to decide if there should be any limitation on the number of states in which an SI operates in to qualify for the exemption from Section 15 registration.

A. A model state registration rule would encourage uniformity of registration requirements, discourage forum shopping, and encourage SIs to register in each state where such registration is required. The state registration program could be funded by examination fees and initial and annual registration fees imposed on the SI and its agents.

B. We believe the CRD system can be expanded to include SIs and their agents, requiring disclosure of any events that would be reportable in response to Item 7 of Form BD or Item 14 of Form U4.

C. There is no need for a minimum net capital requirement since SIs will not be permitted to hold investor or client money or securities. Rather than imposing a net capital requirement, SIs could be subject to a meaningful fidelity bonding requirement, which will help to protect investors.

D. Should SIs be required to be SIPC members? This may require an amendment to SIPA. However, since SIPA essentially protects customers against broker-dealers' misapplication or loss of customer assets, this may not be necessary in the case of SIs.

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[1] We recognize that the SEC cannot legislate or adopt rules for the states. However, the SEC Advisory Committee on Smaller Public Companies in its April 2006 Final Report urged that the SEC should "spearhead a multi-agency effort to create a streamlined NASD registration process for finders, M&A advisors and institutional private placement practitioners" and we continue to look to the SEC to play a leadership role in this dialogue.

V. Reporting Requirements

SIs could be required to submit periodic reports to their state regulators and Form D can be used for this purpose. Other forms of reporting can be considered.

VI. Examinations/Oversight/Licensing Requirements

A. If a federally exempt SI operates in more than one state, we believe one state should have primary jurisdiction for examination purposes. There should be uniformity regarding whether the primary state should be the state of the SI's residence or the state where the SI's main office is located. However, states in which the SI operates should not be precluded from examining activities of an SI occurring in their state.

B. SI agents could be required to pass a uniform state exam, such as the Series 63. SIs should be able to receive accreditation for relevant work experience.

VII. Bad Actor Disqualification/Disclosure

A. SIs and their agents should be subject to the same disqualifications and disclosure requirements that currently apply to registered broker-dealers and their registered persons on Forms BD and U4.

B. States should be encouraged to adopt an amnesty policy for SIs that have previously functioned in this area without registration but without any allegations of fraud, larceny, or other prohibited conduct.

C. States should be encouraged to adopt a rehabilitation process, similar to FINRA's MC-400, subject to final approval by the SEC.