

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 713

Introduced by Assembly Member Wagner

February 21, 2013

An act to amend Section 25004 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 713, as amended, Wagner. Broker-dealers.

Existing law, the Corporate Securities Law of 1968, defines a broker-dealer as, among other things, any person engaged in the business of effecting securities transactions in California for the account of others or his or her own account, and it specifies those persons or entities excluded from the definition.

Pursuant to the Governor's Reorganization Plan No. 2 of 2012 (GRP 2), the regulation of corporations by the Commissioner of Corporations effective July 1, 2013, is transferred to the Commissioner of Business Oversight.

This bill would add to the persons and entities excluded from the definition of a broker-dealer an individual who is a finder, as defined, that satisfied specified requirements, including, among other things, filing an initial statement of information with the Department of Business Oversight and paying a filing fee. The bill also would make technical changes to conform with the GRP 2.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25004 of the Corporations Code is
2 amended to read:

3 25004. (a) “Broker-dealer” means any person engaged in the
4 business of effecting transactions in securities in this state for the
5 account of others or for his own account. “Broker-dealer” also
6 includes a person engaged in the regular business of issuing or
7 guaranteeing options with regard to securities not of his own issue.
8 “Broker-dealer” does not include any of the following:

9 (1) Any other issuer.

10 (2) An agent, when an employee of a broker-dealer or issuer.

11 (3) A bank, trust company, or savings and loan association.

12 (4) Any person insofar as he buys or sells securities for his own
13 account, either individually or in some fiduciary capacity, but not
14 as part of a regular business.

15 (5) A person who has no place of business in this state if he
16 effects transactions in this state exclusively with (A) the issuers
17 of the securities involved in the transactions or (B) other
18 broker-dealers.

19 (6) A broker licensed by the Real Estate Commissioner of this
20 state when engaged in transactions in securities exempted by
21 subdivision (f) or (p) of Section 25100 or in securities the issuance
22 of which is subject to authorization by the Real Estate
23 Commissioner of this state or in transactions exempted by
24 subdivision (e) of Section 25102.

25 (7) An exchange certified by the Commissioner of Business
26 Oversight pursuant to this section when it is issuing or guaranteeing
27 options. The commissioner may by order certify an exchange under
28 this section upon any conditions as he or she by rule or order deems
29 appropriate, and upon notice and opportunity to be heard he may
30 suspend or revoke that certification, if he or she finds the
31 certification, suspension, or revocation to be in the public interest
32 and necessary and appropriate for the protection of investors.

33 (8) (A) An individual who acts only as a finder and who
34 satisfies all of the conditions set forth in subparagraphs (B) to ~~(H)~~
35 (G), inclusive. For purposes of this section, a “finder” is ~~a person~~
36 *an individual* who introduces or refers one or more accredited
37 investors, *as that term is defined in Rule 501(a) of Regulation D*
38 *under the Securities Act of 1933 (17 C.F.R. 230.501(a))*, to an

1 issuer or an issuer to one or more accredited investors, solely for
2 the purpose of a potential ~~investment in the~~ *sale of securities* of
3 the issuer, and who does not (i) participate in negotiating any of
4 the terms of the ~~investment securities transaction~~; (ii) advise any
5 party to the securities transaction regarding the merits of, or the
6 advantages or disadvantages of entering into the ~~investment~~
7 *securities transaction*; or (iii) sell or intend to sell any securities
8 of the issuer, which securities are owned, directly or indirectly, by
9 the finder as a part of the ~~investment~~. ~~A person securities~~
10 *transaction. An individual* who fails to comply with the
11 requirements of this paragraph shall not be entitled to rely on the
12 exemption afforded hereunder.

13 (B) The finder shall have filed ~~an initial statement of information~~
14 with the Department of Business Oversight, ~~in a form as the~~
15 ~~commissioner may prescribe by regulation, and has paid an initial~~
16 ~~filing fee.~~ *prior to engaging in any activities described in*
17 *subparagraph (A), on a form prescribed by the commissioner, an*
18 *initial statement of information that shall include both of the*
19 *following: (i) the name and complete business or residential*
20 *address of the finder and (ii) the mailing address of the finder, if*
21 *different from the business or residential address. A filing fee of*
22 *not more than twenty-five dollars (\$25) may be required to be*
23 *submitted, as determined by the commissioner by rule, to the*
24 *Department of Business Oversight along with the initial statement*
25 *of information required by this subparagraph.*

26 (C) The finder shall have timely filed ~~any an annual reports~~
27 *report* of activity with the Department of Business Oversight, ~~in~~
28 ~~a form as the commissioner may prescribe by regulation, and has~~
29 ~~paid the requisite filing fee.~~ *and paid any requisite filing fee, as*
30 *determined by the commissioner by rule.*

31 (D) For each transaction or series of transactions, the finder
32 shall have filed ~~a notice~~ with the Department of Business
33 Oversight, ~~to be made available to the public in~~ *on a form as*
34 *prescribed by the commissioner* ~~may prescribe by regulation,~~
35 ~~containing,~~ *a notice that shall include the following* affirmative
36 representations by the finder, that the finder (i) is acting only to
37 introduce the ~~parties issuer and the potential purchaser of an~~
38 *issuer's securities* and will not effect any transaction in, advise or
39 consult on, or induce or attempt to induce the purchase or sale of,
40 any ~~security securities~~ in this state; (ii) has not done any of the

1 acts, satisfied any of the circumstances, or is subject to any order
2 specified in Section 25212; ~~(iii) has not engaged in any advertising~~
3 ~~or general solicitation with respect to the offering, sale, or purchase~~
4 ~~of any securities; (iv) (iii) will not receive, directly or indirectly,~~
5 ~~possession or custody of any funds in connection with acting as a~~
6 ~~finder; (v) related to the purchase and sale of the subject securities~~
7 ~~transactions; (iv) has not acted in violation of any provision of~~
8 ~~this section; and (vi) (v) has fully disclosed and obtained the~~
9 ~~informed written consent of the issuer and the potential investor~~
10 ~~each potential purchaser introduced by the finder to the issuer~~
11 ~~regarding the material terms of the compensation arrangement~~
12 ~~between the issuer and the finder relating to the finder's~~
13 ~~introduction of the investor services provided for the subject~~
14 ~~securities transaction. A separate notice shall be filed for each~~
15 ~~new offering of securities transaction or series of transactions, no~~
16 ~~later than 30 calendar 20 business days following the first sale of~~
17 ~~securities in the offering, unless the end of that period falls on a~~
18 ~~Saturday, Sunday or holiday, in which case the due date shall be~~
19 ~~the next business day. For each notice filing, the finder shall pay~~
20 ~~a filing fee, as set from time to time by the Department of Business~~
21 ~~Oversight, offering. The commissioner may by rule require the~~
22 ~~finder to pay a filing fee in connection with the notice required in~~
23 ~~this subparagraph of not more than twenty-five dollars (\$25).~~

24 (E) Concurrently with each introduction, the finder shall have
25 obtained the informed, written consent of each ~~person or entity~~
26 ~~potential purchaser~~ introduced by the finder to an issuer *for the*
27 *purchase and sale of securities of the issuer*, in an agreement signed
28 by the finder, the issuer, and the ~~investor potential purchaser~~,
29 disclosing the following: (i) the type and amount of compensation
30 that will be paid to the finder in connection with the ~~investment~~
31 *subject securities transactions* and the conditions for payment of
32 that compensation; (ii) that the finder shall neither recommend nor
33 advise the ~~investor potential purchaser~~ with respect to the subject
34 securities transaction; (iii) whether the finder is also an owner of
35 the securities ~~offered by~~ of the issuer, and (iv) any other actual and
36 potential conflict of interest in connection with the finder's
37 activities *related to the subject securities transaction*. Each ~~investor~~
38 ~~potential purchaser~~ shall represent in the written consent that the
39 ~~investor potential purchaser~~ is an accredited investor, as that term
40 is defined in *Rule 501(a) of Regulation D* under the Securities

1 Exchange Act of 1933, ~~as amended~~ (17 C.F.R. 230.501(a)), and
2 that the ~~investor~~ *potential purchaser* knowingly consents to the
3 payment of the compensation described therein.

4 (F) The finder shall maintain and preserve, for a period of five
5 years from the date of filing of the notice prescribed in
6 subparagraph ~~(B)~~ (D), a copy of the notice, the written consent
7 required in subparagraph ~~(C)~~ (E), and all other records relating to
8 any ~~investments~~ *securities transaction* in connection with which
9 the finder receives compensation, as the commissioner may by
10 rule require. The finder, upon written request of the commissioner,
11 shall furnish to the commissioner any records required to be
12 maintained and preserved under this subparagraph.

13 (G) The finder shall not engage in any of the following: (i)
14 directly or indirectly ~~taking~~ *take* possession or custody of ~~investor~~
15 funds *related to the purchase and sale of any subject securities*
16 *transaction*; (ii) knowingly ~~participating~~ *participate* in any
17 unregistered offering not otherwise exempt from registration or
18 qualification; (iii) ~~failing to disclose the existence of a financial~~
19 ~~or pecuniary benefit to the finder in connection with or relating to~~
20 ~~the finders' introduction~~ *fail to make the disclosures required by*
21 *subparagraph (E)*; (iv) ~~conducting~~ *conduct* due diligence on behalf
22 of the issuer or investor; (v) ~~soliciting, marketing, advertising, or~~
23 ~~holding himself, herself, or itself out to the public in general as~~
24 ~~being in the business of making introductions between accredited~~
25 ~~investors or issuers or seeking business from accredited investors~~
26 ~~or issuers;~~ (vi) ~~or making any disclosures to investors~~ *the potential*
27 *purchaser related to any subject securities transaction*; (v) *make*
28 *any disclosures to potential purchasers* other than disclosures
29 expressly permitted *or required* under this subparagraph. Permitted
30 disclosures are limited to the name, address, and telephone number
31 of the issuer; the name, type, and price (if known) of any securities
32 to be issued; the issuer's industry, location, and years in business;
33 the type, number, and aggregate amount of securities being offered;
34 and contact information regarding the ~~investor~~ *potential purchaser*.

35 (b) For purposes of this section, an agent is an employee of a
36 broker-dealer under paragraph (2) of subdivision (a) when the
37 agent is employed by or associated with the broker-dealer under
38 all of the following conditions:

39 (1) The agent is subject to the supervision and control of the
40 broker-dealer.

- 1 (2) The agent performs under the name, authority, and marketing
- 2 policies of the broker-dealer.
- 3 (3) The agent discloses to investors the identity of the
- 4 broker-dealer.
- 5 (4) The agent is reported pursuant to subdivision (c) of Section
- 6 25210 and the rules adopted thereunder.