

AMENDED IN ASSEMBLY JANUARY 14, 2014

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, *effective July 1, 2013, from the Commissioner of Corporations 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~~ *who* 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 *or her* own account. “Broker-dealer”
6 also includes a person engaged in the regular business of issuing
7 or guaranteeing options with regard to securities not of his *or her*
8 own issue. “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 *or she* buys or sells securities for
13 his *or her* own account, either individually or in some fiduciary
14 capacity, but not as part of a regular business.
15 (5) A person who has no place of business in this state if he *or*
16 *she* 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 *or she*
30 may 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 *in this state* and
34 who satisfies all of the conditions set forth in subparagraphs (B)
35 to (G), inclusive. For purposes of this section, a “finder” is an

1 individual who introduces or refers one or more accredited
2 investors, as that term is defined in Rule 501(a) of Regulation D
3 under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an
4 issuer or an issuer to one or more accredited investors, solely for
5 the purpose of a potential sale of securities of the issuer, and who
6 does not (i) participate in negotiating any of the terms of the
7 securities transaction; (ii) advise any party to the securities
8 transaction regarding the merits of, or the advantages or
9 disadvantages of entering into the securities transaction; or (iii)
10 sell or intend to sell any securities of the issuer, which securities
11 are owned, directly or indirectly, by the finder as a part of the
12 securities transaction. An individual who fails to comply with the
13 requirements of this paragraph shall not be entitled to rely on the
14 exemption afforded hereunder.

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

26 ~~(C) The finder shall have timely filed an annual report of activity~~
27 ~~with the Department of Business Oversight and paid any requisite~~
28 ~~filing fee, as determined by the commissioner by rule.~~

29 ~~(D)~~

30 (C) For each *securities* transaction or series of *securities*
31 transactions, the finder shall ~~have filed~~ *file* with the Department
32 of Business Oversight, on a form as prescribed by the
33 commissioner, a notice that shall include the following affirmative
34 representations by the finder, that the finder (i) is acting only to
35 introduce the issuer and the potential ~~purchaser~~ *accredited investor*
36 of an issuer's securities and will not effect any *securities*
37 transaction in, advise or consult on, or induce or attempt to induce
38 the purchase or sale of, any securities in this state; (ii) has not done
39 any of the acts, satisfied any of the circumstances, or is subject to
40 any order specified in Section 25212; (iii) will not receive, directly

1 or indirectly, possession or custody of any funds related to the
2 purchase and sale of the subject securities transactions; (iv) has
3 not acted in violation of any provision of this section; and (v) has
4 fully disclosed and obtained the informed written consent of the
5 issuer and each potential ~~purchaser~~ *accredited investor* introduced
6 by the finder to the issuer regarding the material terms of the
7 compensation arrangement between the issuer and the finder
8 relating to the finder's services provided for the subject securities
9 transaction. A separate notice shall be filed for each new *securities*
10 transaction or series of *securities* transactions, no later than 20
11 business days following the first sale of securities in the offering.
12 The commissioner may by rule require the finder to pay a filing
13 fee in connection with the notice required in this subparagraph of
14 not more than twenty-five dollars (\$25).

15 (E) Concurrently with each introduction *or referral*, the finder
16 shall ~~have obtained~~ *obtain* the informed, written consent of each
17 potential ~~purchaser~~ *accredited investor* introduced *or referred* by
18 the finder to an issuer for the purchase and sale of securities of the
19 issuer, in an agreement signed by the finder, the issuer, and the
20 potential ~~purchaser~~ *accredited investor*, disclosing the following:
21 (i) the type and amount of compensation that will be paid to the
22 finder in connection with the subject securities transactions and
23 the conditions for payment of that compensation; (ii) that the finder
24 shall neither recommend nor advise the potential ~~purchaser~~
25 *accredited investor* with respect to the subject securities
26 transaction; (iii) whether the finder is also an owner of the
27 securities of the issuer, and (iv) any other actual and potential
28 conflict of interest in connection with the finder's activities related
29 to the subject securities transaction. Each potential ~~purchaser~~
30 *accredited investor* shall represent in the written consent that the
31 potential ~~purchaser~~ *accredited investor* is an accredited investor,
32 as that term is defined in Rule 501(a) of Regulation D under the
33 Securities Exchange Act of 1933 (17 C.F.R. 230.501(a)), and that
34 the potential ~~purchaser~~ *accredited investor* knowingly consents to
35 the payment of the compensation described therein.

36 (F) The finder shall maintain and preserve, for a period of five
37 years from the date of filing of the notice prescribed in
38 subparagraph (D), a copy of the notice, the written consent required
39 in subparagraph (E), and all other records relating to any securities
40 transaction in connection with which the finder receives

1 compensation, as the commissioner may by rule require. The finder,
2 upon written request of the commissioner, shall furnish to the
3 commissioner any records required to be maintained and preserved
4 under this subparagraph.

5 (G) The finder shall not engage in any of the following: (i)
6 directly or indirectly take possession or custody of funds related
7 to the purchase and sale of any subject securities transaction; (ii)
8 knowingly participate in any unregistered offering not otherwise
9 exempt from registration or qualification; (iii) fail to make the
10 disclosures required by subparagraph (E); (iv) conduct due
11 diligence on behalf of the issuer or the potential ~~purchaser~~
12 *accredited investor* related to any subject securities transaction;
13 (v) make any disclosures to potential ~~purchasers~~ *accredited*
14 *investors* other than disclosures expressly permitted or required
15 under this subparagraph. Permitted disclosures are limited to the
16 name, address, and telephone number of the issuer; the name, type,
17 and price (if known) of any securities to be issued; the issuer's
18 industry, location, and years in business; the type, number, and
19 aggregate amount of securities being offered; and contact
20 information regarding the potential ~~purchaser~~ *accredited investor*.

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

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

27 (2) The agent performs under the name, authority, and marketing
28 policies of the broker-dealer.

29 (3) The agent discloses to investors the identity of the
30 broker-dealer.

31 (4) The agent is reported pursuant to subdivision (c) of Section
32 25210 and the rules adopted thereunder.

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