

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE MAY 23, 2014

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 is transferred, effective July 1, 2013, from the Commissioner of Corporations to the Commissioner of Business Oversight.

This bill would add to the persons excluded from the definition of a broker-dealer an individual who is a finder, as defined, 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.

1 (8) (A) Any finder who satisfies all of the conditions set forth
2 in subparagraphs (B) to (E), inclusive. For purposes of this section,
3 a “finder” is a natural person who, for direct or indirect
4 compensation, introduces or refers one or more accredited
5 investors, as that term is defined in Rule 501(a) of Regulation D
6 under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an
7 issuer or an issuer to one or more accredited investors, solely for
8 the purpose of a potential offer or sale of securities of the issuer
9 in an issuer transaction in this state, and who does not do any of
10 the following:

11 (i) *Provide services to an issuer for a transaction or a series of*
12 *related transactions for the offer or sale of securities of the issuer*
13 *that exceeds a securities purchase price of twenty-five million*
14 *dollars (\$25,000,000) in the aggregate.*

15 ~~(i)~~

16 (ii) Participate in negotiating any of the terms of the offer or
17 sale of the securities.

18 ~~(ii)~~

19 (iii) Advise any party to the transaction regarding the value of
20 the securities or the advisability of investing in, purchasing, or
21 selling the securities.

22 ~~(iii)~~

23 (iv) Conduct any due diligence on the part of any party to the
24 transaction.

25 ~~(iv)~~

26 (v) Sell or offer for sale in connection with the issuer transaction
27 any securities of the issuer that are owned, directly or indirectly,
28 by the finder.

29 ~~(v)~~

30 (vi) Receive, directly or indirectly, possession or custody of any
31 funds in connection with the issuer transaction.

32 ~~(vi)~~

33 (vii) Knowingly receive compensation in connection with any
34 offer or sale of securities unless the sale is qualified under this
35 division or unless the security or the transaction is exempt or not
36 otherwise subject to qualification.

37 ~~(vii)~~

38 (viii) Make any disclosure to a potential purchaser other than
39 the following:

40 (I) The name, address, and contact information of the issuer.

1 (II) The name, type, price, and aggregate amount of any
 2 securities being offered in the issuer transaction.
 3 (III) The issuer’s industry, location, and years in business.
 4 (B) (i) The finder shall file with the Department of Business
 5 Oversight before engaging in any activities described in
 6 subparagraph (A), on a form prescribed by the commissioner, an
 7 initial statement of information that shall include both of the
 8 following:
 9 (I) The name and complete business or residential address of
 10 the finder.
 11 (II) The mailing address of the finder, if different from the
 12 business or residential address.
 13 (ii) A filing fee of not more than ~~twenty-five dollars (\$25)~~ *three*
 14 *hundred dollars (\$300)* may be required to be submitted, as
 15 determined by the commissioner by rule, to the Department of
 16 Business Oversight along with the initial statement of information
 17 required by this subparagraph.
 18 (C) (i) For each issuer transaction, the finder shall file with the
 19 Department of Business Oversight, on a form prescribed by the
 20 commissioner, a notice that shall include ~~all of the following~~
 21 ~~affirmative representations by the finder:~~ *following:*
 22 *(I) The following affirmative representations by the finder:*
 23 ~~(I)~~
 24 *(ia)* The finder has complied and will continue to comply with
 25 the provisions of subparagraph (A).
 26 ~~(II)~~
 27 *(ib)* The finder has not performed any acts or satisfied any
 28 circumstances prohibited by Section 25212, nor been sanctioned
 29 by the commissioner pursuant to Section 25212.
 30 ~~(III)~~
 31 *(ic)* The finder has obtained the written agreement described in
 32 subparagraph (D).
 33 *(II) An indication by the finder as to whether the finder is*
 34 *receiving transaction-based compensation that is subject to the*
 35 *actual sale of securities by the issuer in the transaction.*
 36 (ii) A separate notice shall be filed for each new issuer
 37 transaction, no later than 20 business days following the first sale
 38 of securities. The commissioner may by rule require the finder to
 39 pay a filing fee in connection with the notice required in this
 40 subparagraph of up to ~~twenty-five dollars (\$25)~~ *fifty dollars (\$50)*.

1 (D) (i) Concurrently with each introduction, the finder shall
2 obtain the informed, written consent of each person introduced or
3 referred by the finder to an issuer, in a written agreement signed
4 by the finder, the issuer, and the person introduced or referred,
5 disclosing the following:

6 (I) The type and amount of compensation that has been or will
7 be paid to the finder in connection with the introduction or referral
8 and the conditions for payment of that compensation.

9 (II) That the finder is not providing advice to the issuer or any
10 person introduced or referred by the finder to an issuer as to the
11 value of the securities or as to the advisability of investing in,
12 purchasing, or selling the securities.

13 (III) Whether the finder is also an owner, directly or indirectly,
14 of the securities being offered or sold.

15 (IV) Any actual and potential conflict of interest in connection
16 with the finder's activities related to the issuer transaction.

17 (V) That the parties to the agreement shall have the right to
18 pursue any available remedies at law or otherwise for any breach
19 of the agreement.

20 (ii) To satisfy the requirements of this subparagraph, the
21 agreement shall also include a representation by the person
22 introduced or referred by the finder to the issuer that the person is
23 an accredited investor, as that term is defined in Rule 501(a) of
24 Regulation D under the Securities Exchange Act of 1933 (17 C.F.R.
25 230.501(a)), and that the person knowingly consents to the payment
26 of the compensation described therein.

27 (E) The finder shall maintain and preserve, for a period of five
28 years from the date of filing of the notice prescribed in
29 subparagraph (C), a copy of the notice, the written agreement
30 required in subparagraph (D), and all other records relating to any
31 offer or sale of securities in connection with which the finder
32 receives compensation, as the commissioner may by rule require.
33 The finder, upon written request of the commissioner, shall furnish
34 to the commissioner any records required to be maintained and
35 preserved under this subparagraph.

36 (F) (i) A natural person who does not meet the definition of
37 "finder" set forth in subparagraph (A) and does not satisfy all the
38 conditions set forth in subparagraphs (B) to (E), inclusive, may be
39 determined to be a broker-dealer by the commissioner.

1 (ii) In the event a natural person does not meet the definition of
2 “finder” set forth in subparagraph (A) and does not satisfy all the
3 conditions set forth in subparagraphs (B) to (E), inclusive, any
4 person introduced or referred by that natural person to an issuer,
5 who purchases securities of that issuer in an issuer transaction
6 following that introduction or referral, shall have the right to pursue
7 any applicable remedy afforded under state law, including, without
8 limitation, any applicable remedies pursuant to Section 25501.5.

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

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

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

17 (3) The agent discloses to investors the identity of the
18 broker-dealer.

19 (4) The agent is reported pursuant to subdivision (c) of Section
20 25210 and the rules adopted thereunder.