

Securities Lawyer 101

Finders Q & A



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It is not unusual for a private or public company to be approached by person (“[Finder](#)”) who offers to locate investors in exchange for a success fee. Most finders are not registered as broker-dealers with the Securities and Exchange Commission (“SEC”) or Financial Industry Regulatory Authority (“FINRA”). The possibility of receiving capital even through the efforts of a finder creates a tempting opportunity for issuers who need capital. Matching companies with investors can be a lucrative proposition for the Finder. While it may seem harmless, the SEC does not think so and in fact, the SEC frequently brings cases against unregistered Finders and those who aid and abet them. This Q & A addresses common questions we receive from our clients about Finders.

Q. What types of activities do Finders become involved in?

A. Finders may become involved in various securities transactions including matters other than raising capital, including reverse mergers and direct public offerings. A Finder is not a broker and unlike a broker, a Finder does not regularly engage in securities transactions.

Q. Can I still be a Finder if I participate in negotiations?

A. A Finder does not participate in the promotion, negotiation or sale of securities.

Q. What are the broker-dealer registration provisions?

A. Section 15(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) generally requires any person who effects securities transactions to register with the SEC as a broker-dealer.

Q. How can a Finder be compensated?

A. Compensation of Finders based upon the success or completion of the sale or the amount of securities sold is likely to be viewed as unregistered broker-dealer activity. Similarly, any type of compensation that is a percentage of the securities sold is likely to be viewed as unregistered broker-dealer activity. If used, the Finder should do no more than make introductions of investors to issuers, and should

only be compensated by a flat fee which is not based upon the sale of securities. An agreement between the issuer and the Finder should define the duties and compensation of the Finder.

Q. Who has liability if I am deemed to be an unregistered broker instead of a Finder?

A. The temptation of using a Finder can lead to potential liability for the Finder as well as the issuer. Failure of a Finder to be properly registered as a broker-dealer may subject that person to potential liability, including criminal penalties, fines, suspension, and disbarment.

Q. What is the harm to the issuer if I am deemed to be a broker-dealer instead of a Finder?

A. The potential harm to the companies that use an unregistered Finder includes investor rescission rights. Investors will have a rescission right, meaning that they could demand repayment of their entire investment without set-off or deduction. Companies could also be subject to sanctions and penalties from federal securities regulators as aiding and abetting the unregistered broker-dealer including fines, prohibition on future securities offerings, and criminal actions.

Q. What activities could cause a Finder to be deemed an unregistered broker-dealer?

A. In order to avoid being deemed an unregistered broker-dealer, Finders should

not engage in the [activities](#) below.

- Finders should not advise investors as to the merits of an investment or transaction and Finders should not provide detailed information about an investment to investors.
- Finders should not participate in the drafting of subscription documents or offering materials.
- Finders should not recommend the investment or the transaction.
- Finders should not engage in negotiations.
- Finders should not receive [transaction based compensation](#); and
- The Finder should not have previously been involved or, be involved on a regular basis now in the offer or sale of securities.

Q. If I am a Finder do I have to disclose my compensation to the investor or parties I introduce to a transaction?

A. Yes. In order to comply with the antifraud provisions of the securities laws, the issuer must disclose to investors [all compensation](#) paid to Finders.

For further information about [Finders](#), please contact [Brenda Hamilton](#), Securities Attorney at 101 Plaza Real South, Suite 202 North, Boca Raton, FL, (561) 416-8956, or by email at info@securitieslawyer101.com. This securities law Q & A is provided as a general or informational service to clients and friends of [Hamilton & Associates Law Group, P.A.](#) and should not be construed as, and does not constitute legal advice on any specific matter, nor does this message create an attorney-client relationship. Please note that prior results discussed herein do not guarantee similar outcomes.
