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Finders, M&A Brokers and Broker-Dealer Registration

A practical guide to the Section 15(b)(13) M&A broker exemption, finder arrangements and investor-side intermediaries

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INTRODUCTION

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A person who introduces an investor, a buyer or an acquisition target to a company, and is paid when the deal closes, is often doing something the federal securities laws regulate. Whether that person must register as a broker-dealer turns less on the label in their engagement letter than on what the person does, for whom, how often and how the fee is calculated.

Few areas of securities regulation generate as much confusion among market participants. First-time founders, family offices and business owners often assume that a one-time introduction, or a fee labeled a “finder’s fee” or “consulting fee,” falls outside the securities laws. Experienced dealmakers, M&A advisors and even lawyers frequently disagree about where permissible introductions end and broker activity begins. The confusion is understandable. Congress has never defined the term “finder,” and the SEC has never adopted a finder rule. The guidance that exists comes from fact-specific staff no-action letters, some of which the staff has said it would not issue today, and from a small number of court decisions that do not always agree with the SEC’s view. [1] One federal court called the line between a finder and a broker “largely unexplored.” [2] An SEC advisory committee found “significant uncertainty in the marketplace” as early as 2017, and in 2026 another advisory committee told the Commission that the current rules discourage legitimate finder activity. [3, 4] Adding to the uncertainty, a separate statutory exemption now covers M&A brokers but not ordinary finders, and each state applies its own rules. As a result, many intermediaries, and the companies and investors who pay them, enter into arrangements without realizing that the fee itself may be unenforceable or may expose both sides to regulatory risk.

The issue is also changing. After years of inaction, finder regulation is back before the SEC. In February 2026, Chairman Atkins and Commissioners Uyeda and Peirce each publicly called for reform of the finder framework. [5] The SEC’s regulatory agenda lists a finder rulemaking with an October 2026 target date; its Small Business Capital Formation Advisory Committee recommended a limited finder exemption in 2026; a March 2026 petition

asked the Commission to revive the rulemaking; and amendments to FINRA's Capital Acquisition Broker rules, effective March 25, 2026, created a lighter registered pathway for firms that place securities with institutional investors and advise on control transactions. [3, 4, 6, 7] Until the Commission acts, however, the existing law described in this guide governs, and Chapter 3 tracks where reform stands.

There is a threshold question before any of that analysis: does the transaction involve a security at all? A merger, a stock purchase or an issuance of shares usually does. A purchase of assets or of a business, a commercial joint venture or a licensing arrangement may not, and an intermediary on a transaction that involves no security does not need a federal broker-registration exemption. The answer is not always known at the outset, however, and a federal court of appeals has held that uncertainty about the final form of a deal does not protect an intermediary whose engagement contemplates a securities transaction. [8] State business-broker or real estate licensing rules can also reach transactions that involve no security (Chapter 8).

This guide covers the three frameworks that decide most of these questions in private transactions. The first is the case-by-case finder analysis built on SEC staff no-action letters and court decisions. The second is the SEC's 2020 proposed finder exemption, which was never adopted but is again under active discussion in 2026 and appears on the SEC's regulatory agenda. [6] The third is the statutory M&A broker exemption in Section 15(b)(13) of the Securities Exchange Act of 1934, which since March 29, 2023 has allowed qualifying intermediaries to earn success fees in control transactions involving smaller private companies without registering with the SEC.

The guide also addresses arrangements in which the investor, rather than the company, hires the intermediary; how to structure a minority investment of 25% or more so that it can qualify for the M&A broker exemption; the need to consider state law separately; and a checklist of the facts to resolve before an engagement is documented. The law is stated as of October 19, 2026. Bracketed numbers refer to the sources listed at the end.

CHAPTER 01

Why Broker-Dealer Registration Matters in Private Deals

Section 15(a) of the Exchange Act makes it unlawful for a broker or dealer to use the mails or any means of interstate commerce to effect, induce or attempt to induce a securities transaction unless it is registered with the SEC. [9] A broker, in this sense, is a person engaged in the business of effecting transactions in securities for the account of others. [10]

That definition reaches further than many deal participants expect. The sale of a business is often a securities transaction, because it is carried out through a stock purchase, a merger or an issuance of new shares. A purchase of assets may involve no security, but where an engagement contemplates a sale that could be structured either way, a court may treat the intermediary as having attempted to induce a securities transaction. [8] The SEC has long treated transaction-based compensation, such as a success fee tied to closing, as a hallmark of broker activity. An advisor who helps sell a company through a transfer of securities can therefore be a broker even if the advisor does not think of itself as a securities professional. [10]

The same reasoning applies to finders who introduce investors to a company raising capital. The concern behind the SEC's focus on transaction-based compensation is the incentive it creates: a person paid a percentage of what investors put in has a reason to sell, and the broker registration regime exists to regulate people who sell securities. [11]

What is at stake

- **Enforcement.** Acting as an unregistered broker can lead to SEC and state enforcement, civil penalties and disgorgement. [10]
- **Unenforceable fees.** Compensation arrangements with an unregistered broker may be unenforceable, so a finder may be unable to collect a fee it has earned on paper. [10, 12]
- **Voidable contracts.** Section 29(b) of the Exchange Act makes a contract made in violation of the Act, or whose performance involves a violation, void as to the rights of the violating party, and courts treat such contracts as voidable at the option of the innocent party. [8, 13] The analysis is contract by contract. The engagement agreement with the

unregistered intermediary is the contract most directly exposed. Whether an investor may rescind its own purchase agreement is a separate question that depends on that contract, how it was made and performed, and the parties' rights; an unlawful engagement does not automatically unwind the underlying investment or entitle every investor to recover its money. [12, 13]

- **Exposure for the company that pays.** Issuers and buyers that engage unregistered intermediaries share the risk, including rescission claims and enforcement attention. [14]
- **Registered firms can pay only those who need not register.** FINRA Rule 2040 bars member firms from paying compensation to an unregistered person whose activities require broker-dealer registration. A firm may pay a true finder whose activities do not require registration, but it must reasonably support that conclusion, for example through SEC releases or no-action letters on point or an opinion of independent U.S. counsel, and keep records of it. A separate provision permits payments to non-U.S. finders who refer non-U.S. customers, subject to disclosure and other conditions. [15, 16]

PRACTICE NOTE

The registration question is never only the intermediary's problem. The company or investor that signs the engagement letter is the party most likely to face a rescission demand, a disclosure question in its next offering, or diligence questions from a later buyer or underwriter.

Four questions that decide most cases

Once a securities transaction is involved, an intermediary's status turns on four questions. **Whose agent is it** (the company, the investor or both)? **What does it do** beyond making an introduction? **How is it paid**, and does the fee depend on closing or on the amount invested? **How often** does it do this? The chapters that follow apply those questions to the finder doctrine, the 2020 proposal and the M&A broker exemption.

Consistent with a limited finder role

- Supplies names of pre-existing contacts
- Isolated, infrequent introductions
- No role in negotiating or valuing the deal
- Paid for the introduction, not for selling
- Never touches funds or securities

Factors that point toward broker activity

- Solicits or recommends the investment
- Negotiates terms or structures the deal
- Repeat deals or many issuers or investors
- Handles funds; holds out as a broker
- Pay tied to closing or amount invested

No single factor is decisive. The SEC calls transaction-based pay a hallmark of broker activity, but in SEC v. Kramer the court held it is not enough without other broker activity.

is decisive. The SEC treats transaction-based compensation as a hallmark of broker activity, but SEC v. Kramer held that it is not sufficient on its own. Sources: [1, 2, 10, 15, 17].

Figure 1. Factors courts and the SEC weigh in distinguishing a finder from a broker. No single factor

1991 – 2022**2023 – 2027**

Figure 2. Key developments in the regulation of finders and M&A brokers, 1991–2027. Numbers refer to the key that follows. Sources: [2, 3, 4, 7, 9, 10, 18, 19, 20, 21, 22, 23].

1 Paul Anka no-action letter (July 24, 1991). SEC staff did not object to a one-time finder's fee for supplying an issuer with names of pre-existing contacts believed to be accredited investors.

2 Brumberg, Mackey & Wall no-action letter (May 17, 2010). Staff refused relief for introductions paid as a percentage of funds raised, inferring pre-screening and pre-selling.

- 3 **SEC v. Kramer (M.D. Fla. Apr. 1, 2011).** The court held that transaction-based compensation alone did not make an introducer a broker.
- 4 **SEC staff M&A Brokers no-action letter (Jan. 31, 2014; revised Feb. 4, 2014).** Staff relief for advisors in private company control transactions; withdrawn when the statute took effect.
- 5 **NASAA model M&A broker rule (Sept. 29, 2015).** A model state exemption for M&A brokers published by the association of state securities regulators.
- 6 **SEC proposed finder exemption (Oct. 7, 2020).** A two-tier conditional exemption for finders in private offerings to accredited investors; never adopted.
- 7 **Consolidated Appropriations Act, 2023 (Dec. 29, 2022).** Congress enacted the M&A broker exemption as Exchange Act Section 15(b)(13).
- 8 **Section 15(b)(13) takes effect (Mar. 29, 2023).** The statutory exemption became effective, and the SEC staff withdrew the 2014 letter.
- 9 **NASAA model rule amended (May 6, 2024).** The model state rule was revised to align with the federal statute, including a 25% control threshold.
- 10 **SEC advisory committee meeting (July 22, 2025).** The Small Business Capital Formation Advisory Committee took up a regulatory framework for finders.
- 11 **SEC approves FINRA CAB amendments (Feb. 10, 2026).** Expanded what registered Capital Acquisition Brokers may do; effective March 25, 2026.
- 12 **Advisory committee finder recommendations (Feb. 24, 2026).** The committee urged a limited finder exemption; transmitted to the SEC Chairman on April 14, 2026.
- 13 **Petition for finder rulemaking (Mar. 17, 2026).** A law firm asked the SEC to revive finder rulemaking and issue interim guidance.
- 14 **First inflation adjustment due (Dec. 29, 2027).** The statute requires the M&A broker size thresholds to be adjusted for inflation every five years.

CHAPTER 02

The Finder Concept: Built From No-Action Letters and Case Law

There is no finder exception in the Exchange Act or in the SEC's rules. The finder analysis rests on SEC staff no-action letters and a small number of court decisions. [1] A person who calls itself a finder is therefore relying on facts, not on a defined category.

What “engaged in the business” means

Courts read the phrase “engaged in the business” as requiring a certain regularity of participation in securities transactions, rather than a few isolated transactions. Two groups of facts carry the most weight: the number of transactions and clients, and the dollar amount of securities sold together with any advertising or solicitation of investors. Neither is decisive on its own. [1]

Can an individual be “engaged in the business”?

Yes. The Exchange Act defines a broker as “any person” engaged in the business of effecting securities transactions for the account of others, and “person” includes a natural person. [24] Many SEC registration cases, including *Kramer*, are brought against individuals. [2]

How the activity is organized is nonetheless evidence. In dealer cases, the Eleventh Circuit has pointed to the trappings of a business: an operating company or LLC

through which the activity is conducted, employees, an office, a website, press releases, spending on lead generation and sponsorship of industry conferences. In *SEC v. Keener*, an individual operating through his own business was held to be an unregistered dealer on that kind of record. [25] The same features can show that an intermediary is in the business of brokering rather than making an occasional introduction. A finder who operates through an entity formed to make introductions, markets introduction services or employs staff to source deals looks like a business. An individual who makes an occasional introduction from personal relationships looks less like one. Neither form is decisive: an individual can be a broker, and an entity can make an isolated introduction. The SEC's 2020 proposed finder exemption was limited to natural persons, reflecting the view that an individual can act as a finder without operating a brokerage business. [26]

Commentators and the SEC staff commonly point to the same indicators of broker activity: soliciting investors, negotiating terms or recommending the investment, handling investor funds or securities, participating at key points in the transaction, holding oneself out as a broker, and receiving transaction-based compensation. [15, 17] A finder's activity, by contrast, is generally infrequent and limited to providing names. [17]

Other factors the SEC and the courts consider

Beyond those core indicators, the SEC staff and the courts have looked at a longer list of facts. The SEC's *Guide to Broker-Dealer Registration* asks four questions: whether the person participates in important parts of a securities transaction, including solicitation, negotiation or execution; whether the person's compensation depends on the outcome or size of the transaction; whether the person is otherwise engaged in the business of effecting or facilitating securities transactions; and whether the person handles the securities or funds of others. The guide lists finders and business brokers among those who may need to register, depending on their activities. [27]

Courts frequently apply the factors drawn from *SEC v. Hansen*, as summarized in *Kramer*: whether the person is an employee of the issuer, receives commissions rather than a salary, is selling or has previously sold the securities of other issuers, participates in negotiations between the issuer and the investor, provides advice or valuations about the merits of the investment, and actively, rather than passively, finds investors. *Kramer* also noted that regular participation at key points in the chain of distribution has been treated as the most important factor. [2] The no-action letters and the 2020 proposal point to additional facts:

- **Prior relationships.** Whether the people introduced are the person's existing business or personal contacts rather than strangers found through outreach. [18]
- **Track record.** Whether the person has previously sold securities or acted as a finder, and whether the person is subject to a statutory disqualification. [18, 26]
- **Activity after the introduction.** Whether the person stays involved, passes along information about the issuer or follows up with investors. In *Brumberg*, the staff inferred pre-selling from the proposed introductions themselves. [28]
- **Materials, diligence and structuring.** Whether the person prepares or distributes sales materials, performs due diligence or independent analysis, or helps structure the transaction. [26]
- **Financing and authority.** Whether the person arranges or provides financing for the purchase, or has authority to bind the issuer or an investor. [26]

- **Investor type.** Whether the investors are accredited or institutional. That bears on the issuer's offering exemption and on enforcement priorities, but not on whether the intermediary must register.

No single factor controls. Courts weigh them together, against the background of what the person actually did. [2]

Paul Anka (1991)

The no-action letter most often cited for finders involved the singer Paul Anka and the sale of limited partnership units in the Ottawa Senators hockey club. [20] The staff did not object when Anka agreed with the issuer to provide a list of names and telephone numbers of people he reasonably believed were accredited investors and with whom he had a pre-existing relationship, to have no further contact with them about the issuer, and to receive a finder's fee. [18]

The letter's facts were narrow. Anka had not previously participated in a securities offering or acted as a finder, and he did not intend to do so again, so the letter addressed an individual's first and only participation. [18] SEC staff have also said in public remarks that they would not grant comparable relief on similar compensation facts today. [1] Anka is best read as a description of the outer edge of permissible activity, not as a safe harbor. [20]

Brumberg (2010) and SEC v. Kramer (2011)

In the 2010 Brumberg, Mackey & Wall no-action letter, the staff declined relief to a law firm that proposed to introduce potential investors to a renewable energy company for a percentage of the funds raised, even though the firm said it would not negotiate, recommend terms or assist in the financing. The staff reasoned that the introductions would likely involve pre-screening investors and pre-selling the company, and that the transaction-based fee would give the firm a strong incentive to engage in that sales activity. [19, 28] The letter therefore rests on inferred sales activity as well as on the form of compensation.

A year later, in *SEC v. Kramer*, the Middle District of Florida rejected the Commission's broker claim after a bench trial. Its analysis has two distinct parts. [2]

The first concerned Kramer's introduction of a registered broker, Nick Talib, to the company. Kramer drove Talib from the airport and toured the facility

while the others met. The court found that this conduct “consisted of nothing more than bringing together the parties to a transaction,” an “ephemeral, remote, and isolated initiative,” and that the payment Kramer received for it could not, without more, make him a broker. [2]

The second concerned Kramer’s friends and relatives. He told them the company was a good investment and pointed them to its website and press releases, and the company gave him shares for reporting their purchases. The court analyzed these facts separately. It found that sharing an opinion with a small circle of intimates and directing them to public materials did not amount to the solicitation the Commission had to prove, described the share payments as “[o]dd, but not ‘broker’ activity,” and noted the absence of admissible evidence that Kramer sold shares or contacted unknown investors. [2] *Kramer* therefore is not a case in which nothing resembling promotion occurred; it is a case in which the court found the Commission’s proof insufficient on specific facts.

The court acknowledged that transaction-based compensation is a hallmark of a salesman but declined to treat it as sufficient on its own, and it refused to apply the staff’s 2010 Brumberg position retroactively to conduct from 2003 to 2005. [2, 11]

Kramer is a district court decision. It does not bind other courts, but it is frequently cited, and in 2025 the Eleventh Circuit applied a similar functional analysis in *Hayden v. Urvan*, an unpublished decision that declined to treat a one-time business introducer as a broker. [2, 29]

The SEC has not accepted *Kramer*. In a later administrative proceeding, the Division of Enforcement argued that the decision is inconsistent with Commission precedent and is distinguishable where the intermediary has a direct contract with the issuer and receives transaction-based compensation from it. [30] That is an enforcement litigating position, not a ruling, and it does not change what *Kramer* held. It matters in practice because it signals how the SEC staff may view an arrangement, and because the structure it describes is common: most finder’s fee agreements are written contracts signed directly with

the issuer, under which the issuer pays the finder a percentage of the capital invested by the investors the finder introduced.

How many introductions are too many?

No statute, rule or staff letter sets a number. The two clearest benchmarks are both one-time cases: Anka covered a first and only participation, and the most restrictive tier of the SEC’s 2020 proposal would have allowed a finder to supply investor contacts for a single capital raising transaction by a single issuer in a twelve-month period. [18, 31] Neither benchmark marks a present-law boundary: Anka is a staff letter limited to its facts, and the 2020 proposal was never adopted. Nor do a single offering or infrequent activity supply a safe harbor of their own. Several introductions within one offering can themselves involve substantial solicitation. Beyond that, each additional transaction, each additional issuer, and each additional year in which the person continues to make compensated introductions makes the intermediary look more like a person in the business. What matters is the pattern of activity over time, not how long the person has known the parties. [1]

Does the investor’s sophistication matter?

No federal broker-registration exemption turns on how sophisticated or experienced the introduced investor is. Accredited investor and qualified institutional buyer status matter for an issuer’s offering exemption, such as Rule 506 or Rule 144A, not for the intermediary who arranges the sale.

Rule 15a-6 is the one investor-based federal exemption, and it is for foreign firms only. A broker-dealer located outside the United States may deal with “U.S. institutional investors” and “major U.S. institutional investors” without registering, under conditions. Major investors are generally those with more than \$100 million in assets, or \$100 million in financial assets under 1997 staff relief. The conditions include unsolicited trades, research for major investors, and solicitation only through a chaperoning U.S. registered broker-dealer. The rule does not cover an intermediary located in the United States, and introducing a large foreign institution does not bring it into play. [32, 33]

CHAPTER 03

The 2020 Proposed Finder Exemption and the 2026 Reform Push

On October 7, 2020, the SEC voted 3–2 to propose a conditional exemption from broker registration for finders who help issuers raise capital privately from accredited investors. [22] The proposal would have operated as a nonexclusive safe harbor, so a finder outside it would still have been judged under the general analysis. [34]

Conditions common to both tiers

- The finder must be a natural person; entities could not rely on the exemption. [35]
- The issuer may not be an SEC reporting company. [34]
- The offering must rely on an exemption from Securities Act registration. [22]
- Investors must be accredited, or the finder must reasonably believe they are, and the finder may not use general solicitation. [34]
- The finder must work under a written agreement with the issuer describing the services and the compensation. [34]
- The finder may not be an associated person of a broker-dealer or subject to statutory disqualification. [18]

Tier I and Tier II

A **Tier I finder** could only give the issuer contact information for potential investors, in connection with a single capital raising transaction by a single issuer in a twelve-month period, and could have no contact with those investors about the issuer. [26, 31] The tier allowed multiple investor introductions, but only to one issuer within the period. [36]

A **Tier II finder** could solicit investors on the issuer's behalf. Before or at the time of the solicitation, the finder would have had to disclose to each investor the finder's name, the issuer's name, the finder's relationship with the issuer, the compensation arrangement, any material conflicts of interest, and an affirmative statement that the finder acts as the issuer's agent, is not an associated person of a broker-dealer and

is not acting in the investor's best interest. Oral disclosure would have been allowed only if supplemented in writing no later than the time of the related investment, and the finder would have had to obtain the investor's dated written acknowledgment of receipt before or at the time of the investment. [26]

Neither tier could structure the transaction or negotiate the terms of the offering, handle customer funds or securities, bind the issuer or an investor, participate in preparing sales materials, perform independent analysis of the sale, engage in due diligence, assist with or provide financing for purchases, or advise on valuation or the financial advisability of the investment. [26]

Where things stand in 2026

The 2020 proposal was never finalized, and the SEC continued to describe it in 2025 as proposed but not adopted. [15] The SEC's Fall 2025 regulatory agenda, however, lists "Regulatory Status of Finders" (RIN 3235-AN69) at the proposed-rule stage, with a target date of October 2026. [6] An agenda entry signals that the staff is considering a recommendation; it is not a proposal, and target dates often slip.

The subject is nonetheless back on the agenda. The SEC's Small Business Capital Formation Advisory Committee took it up at its July 22, 2025 meeting. [23] In February 2026, Chairman Atkins and Commissioners Uyeda and Peirce each publicly called for reform of the finder framework. [5] The committee approved recommendations at its February 24, 2026 meeting and transmitted them to Chairman Atkins on April 14, 2026. They urge a limited exemption for finders assisting companies, would let finders discuss the issuer and the financing terms with potential investors, support disclosure of the finder's identity, fees and relationships, call for any registration to be minimal, ask the Commission to consider federal preemption of state rules, and reaffirm the committee's 2020 recommendations, including keeping bad actors out and considering a blanket exemption for offerings below a certain size. The committee's non-voting NASAA representative did not support the

recommendations. [4] On March 17, 2026, a law firm petitioned the SEC to revive the rulemaking and, in the meantime, to issue interpretive guidance. [3, 15]

One concrete change has been adopted. On February 10, 2026, the SEC approved amendments to FINRA's Capital Acquisition Broker (CAB) rules, which took effect on March 25, 2026. [7, 37] Registered CABs may now act as placement agents for institutional investor buyers in sales of newly issued unregistered securities, represent buyers or sellers in change-of-control transactions, and operate under rules that refer to the statutory M&A broker exemption. [7, 15] New CAB Rule 511 permits a CAB to receive equity securities of a privately held issuer client as compensation for permitted services; it codifies a 2019 FINRA staff interpretive letter rather than creating an entirely new permission. [7, 37]

A CAB is a category of registered broker-dealer firm, not an exemption for individuals. The amendments create a lighter registered pathway for firms and their registered personnel; they do not exempt an individual finder from registration. [15]

PRACTICE NOTE

Until the Commission acts, issuers and finders should expect the SEC to apply its historical view, in which transaction-based compensation is the leading indicator of broker status, although some courts have declined to treat it as decisive. [2, 38] Even in its 2020 form, the proposal would not have helped a Nasdaq- or NYSE-listed issuer, which is a reporting company, or an intermediary hired by the investor rather than the issuer.

A different route: the statutory M&A broker exemption

Table 1 compares the finder authorities with a separate, statutory route. Since March 29, 2023, Section 15(b)(13) of the Exchange Act has exempted qualifying “M&A brokers” from SEC broker-dealer registration. [9, 10] Unlike Anka and the 2020 proposal, it is law rather than staff guidance or a proposal; it covers intermediaries acting for either the buyer or the seller; and it permits success fees. Its reach is narrower in a different way. It applies only when a transaction transfers ownership of an eligible privately held company, meaning a non-reporting company with EBITDA under \$25 million or gross revenues under \$250 million in the prior fiscal year, to a buyer that will control the company and be active in its management. The broker must also avoid nine excluded activities, such as handling the parties' funds, binding a party or dealing with passive buyers. [9] It does not cover raising capital from passive investors. Chapters 5 through 7 explain the exemption in detail.

Table 1. *Finder relief compared with the statutory M&A broker exemption. Sources: [9, 10, 15, 18, 22, 31, 34].*

	Paul Anka letter (1991)	2020 proposal: Tier I	2020 proposal: Tier II	M&A broker exemption
Legal status	Staff no-action letter; fact-specific	Proposed; never adopted	Proposed; never adopted	Statute, effective March 29, 2023
Whose agent	Issuer	Issuer	Issuer	Seller or buyer
Transaction	Private sale of LP units by the issuer	Exempt offering by a non-reporting issuer	Exempt offering by a non-reporting issuer	Transfer of control of an eligible privately held company to an active buyer
Contact with investors	None after names are provided	None	Solicitation, with written disclosure and dated investor acknowledgment	Permitted, including negotiation
Success fee	Yes, on the stated facts	Yes, if all conditions met	Yes, if all conditions met	Yes
Frequency	First and only participation	One issuer, one transaction, per 12 months	No stated limit	No limit
Who may rely	The individual requester	Natural persons only	Natural persons only	Brokers and their associated persons

CHAPTER 04

When the Investor Hires the Intermediary

Many introductions run in the opposite direction. A family office, private equity fund or strategic investor retains someone to locate companies to invest in or acquire, and the investor pays the fee. This arrangement isn't unusual, and it is poorly served by the finder authorities.

Both Anka and the 2020 proposal were built around the issuer. Anka's arrangement was an agreement with the issuer to supply names of potential investors to the issuer, and the 2020 proposal required a written agreement with the issuer and, for Tier II, a statement that the finder acts as the issuer's agent. [18, 34] An intermediary who works for the investor cannot meet those conditions.

Broker analysis on the buy side

An intermediary acting as the buyer's agent in a securities purchase is acting for the account of others,

which is the core of the broker definition. A success fee paid by the investor when an investment closes is the classic pattern the SEC associates with broker activity, regardless of which side pays. [10] Regularity matters too: an intermediary who sources deals for several investors, or a steady stream of deals for one investor, looks like a person in the business.

Investment adviser risk

If the intermediary screens, evaluates or recommends opportunities to the investor for compensation, a separate question arises under the Investment Advisers Act. The Act's definition reaches persons in the business of advising others, directly or through writings, about the value of securities or the advisability of investing in them, and persons who issue analyses or reports about securities as part of a regular business, for compensation. [39]

Having the investor set the criteria (sector, size, geography) and avoiding commentary on merits can reduce that risk, but it does not eliminate it. Choosing which opportunities to present can itself be substantive screening, a pattern of selection can operate as an implicit recommendation, and compensated reports or analyses about securities can implicate the Act without any express recommendation. The M&A broker exemption addresses only broker registration; it does not resolve adviser status.

Who pays, and who is represented

Who retains the intermediary, who pays it and whom it represents are separate questions. An investor may retain an intermediary while the company pays the fee without the intermediary representing both sides, and the reverse is also possible. Representation turns on whose interests the intermediary has agreed to act for and what it actually does. If the intermediary relies on the M&A broker exemption discussed in Chapters 5 and 6, representing both buyer and seller is permitted only with clear written disclosure of the parties represented and the written consent of both; that condition applies to actual representation of both sides, not merely to who pays (Chapter 6). [9] Outside the exemption, consent does not cure a registration problem. In either case, a payment from the other side deserves attention: it can create a conflict that should be disclosed, and conduct on the payer's behalf can turn into representation of it.

Paths that can work

- **A control transaction.** The M&A broker exemption expressly covers brokers acting for

buyers. If the investor will control the company and be active in its management, the exemption may apply (Chapters 5 to 7). [9, 10]

- **A registered pathway.** The individual can become a registered representative associated with a registered broker-dealer, including a Capital Acquisition Broker, which may now represent institutional investor buyers. That route requires actual association, the required qualification examinations and registration, supervision by the firm, and payment through the firm; FINRA Rule 2040 bars a member firm from paying an unregistered person whose activities require registration. Bringing in a registered firm does not authorize activities the individual performs outside that supervision, and it does not cure earlier unregistered conduct. [7, 15]
- **A non-contingent fee, set prospectively.** A flat or hourly fee that does not depend on closing, deal size or investment performance, agreed before the services are performed and limited to services that do not themselves require registration, lowers the risk. It does not resolve registration on its own: regularity, solicitation and other broker activity still count, and relabeling a success fee after the services are performed does not change their character.

On the buy side, the decisive question is often not whom the intermediary works for. It is whether the investor ends up in control.

CHAPTER 05

The Section 15(b)(13) M&A Broker Exemption

Origins

For years, business brokers and M&A advisors relied on the SEC staff's 2014 M&A Brokers no-action letter, which was non-binding and fact-specific. Congress codified a statutory exemption in the Consolidated Appropriations Act, 2023, signed on December 29, 2022. Section 15(b)(13) became effective on March 29, 2023, and the staff withdrew the 2014 letter the same day. The statute largely tracks the 2014 relief but is narrower in one important respect: it applies only to

transactions involving smaller “eligible privately held companies.” [10]

Who is an M&A broker

An M&A broker is a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company. It does not matter whether the broker acts for the seller or the buyer. The covered transactions include the purchase, sale, exchange, issuance, repurchase or

redemption of, or a business combination involving, the company's securities or assets. [9] Because issuances are covered, a primary investment in which a buyer acquires control through newly issued shares can qualify.

The word "solely" deserves attention. The definition covers a person engaged in the business of effecting securities transactions solely in connection with transfers of ownership of eligible privately held companies. [9] An intermediary whose business also includes raising capital from passive investors, or introducing investors to funds, for transaction-based pay may fall outside the definition altogether, rather than merely losing coverage for that other activity. Putting the qualifying engagement in a separate agreement does not necessarily isolate it, because the statutory test looks at the person's business as a whole. We are not aware of court decisions or SEC guidance interpreting the word. [15, 40]

Is the company an eligible privately held company?

- **Not a reporting company.** The company may not have a class of securities registered, or required to be registered, under Section 12, and may not file or be required to file periodic reports under Section 15(d). [9]
- **Below the size thresholds.** In the fiscal year ending immediately before the fiscal year in which the broker is first engaged, the company must have EBITDA of less than \$25 million or gross revenues of less than \$250 million, based on its historical financial records. [9, 10]

The statute requires the company to meet "either or both" size conditions, so a company with revenues above \$250 million can qualify if its EBITDA is under \$25 million, and vice versa. [9] Some early commentary described the test as requiring both, so practitioners should work from the statutory text. [41]

The SEC may modify the dollar figures by rule. In addition, the statute requires an inflation adjustment five years after December 29, 2022 and every five years after that, using the Employment Cost Index for wages and salaries of private industry workers, with each figure rounded to the nearest \$100,000. [9] The first adjustment therefore falls due in late December 2027, and the thresholds should be monitored. [10]

Control and active management

The broker must reasonably believe that, once the transaction closes, any person acquiring securities or assets of the company, acting alone or in concert, will control the company (or the business conducted with its assets) and will be active in its management, directly or indirectly. [9] This reasonable-belief standard is a lower bar than the 2014 letter, which required the buyer actually to control and operate the business. [10]

Control means the power to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. Control is presumed if, after the transaction, the buyer or buyer group has the right to vote, or the power to sell or direct the sale of, 25% or more of a class of voting securities, or, for a partnership or LLC, has the right to receive on dissolution, or has contributed, 25% or more of the capital. [9]

Active management can be shown, for example, by electing executive officers, approving the annual budget, or serving as an executive or other executive manager. The SEC may add other activities by rule. [9]

Information when securities are the consideration

If any person is offered securities in exchange for the company's securities or assets, as when sellers receive the buyer's stock, the broker must reasonably believe that the person will receive, or have reasonable access to, certain information before becoming legally bound. That information is the issuer's most recent fiscal year-end financial statements as customarily prepared, any related accountant's statement, a balance sheet dated no more than 120 days before the offer, and information about management, the business, results of operations and material loss contingencies. [9]

Disqualification

The exemption is unavailable if the broker, or any of its officers, directors, members, managers, partners or employees, has been barred from association with a broker-dealer by the SEC, a state or a self-regulatory organization, or is suspended from association with a broker-dealer. [9]

Reasonable belief: conditions 3 and 4 as of closing; condition 5 before the recipient is legally bound

1 M&A broker

Effects securities transactions solely in connection with the transfer of ownership of an eligible privately held company, for the seller or the buyer.

2 Eligible company

Not an SEC reporting company. In the fiscal year before engagement: EBITDA under \$25 million or gross revenues under \$250 million.

3 Control

The buyer will control the company. Presumed at 25% of a class of voting securities (or of LLC capital); control can also be shown by other means.

4 Active management

A separate condition: the buyer will in fact be active in management, e.g. by electing executive officers, approving the budget or serving as an executive.

5 Information

Securities offered in exchange: before being bound, recipients get year-end financials, a balance sheet dated within 120 days before the offer, and more.

6 No disqualification

Neither the broker nor its officers, directors, members, managers, partners or employees is barred or suspended from association with a broker-dealer.

Figure 3. The conditions an intermediary must satisfy to rely on the federal M&A broker exemption. Every condition must be met for every transaction. Sources: [9, 10].

CHAPTER 06

Nine Activities That Remove the M&A Broker Exemption

Section 15(b)(13) lists nine activities that take an M&A broker outside the exemption. Engaging in any one of them means the broker cannot rely on the exemption for that transaction and may be exposed to liability as an unregistered broker-dealer. [9, 10]

Custody and closing mechanics

The broker may not, directly or indirectly, receive, hold, transmit or have custody of the funds or securities the parties exchange. [9, 42] Closing mechanics should run through an escrow agent, a paying agent or the parties' counsel, not the broker.

Public offerings and shell companies

The broker may not act for an issuer in a public offering of a class of securities that is registered, or required to be registered, under Section 12, or of an issuer that reports under Section 15(d). Nor may it act for any party in a transaction involving a shell company, other than a business combination related shell company. That exception applies only to a shell formed by an entity that is not itself a shell company, solely to change that entity's corporate domicile within the United States or solely to complete a business combination

among one or more entities other than the shell itself, none of which is a shell company. [9]

A shell company for this purpose is one with no or nominal operations and either no or nominal assets or assets consisting solely of cash and cash equivalents, alone or with nominal other assets. [9] A special purpose acquisition company holding its trust account will generally fit that description, so introductions in de-SPAC transactions fall outside the exemption.

Financing

The broker may not provide financing for the transfer of ownership, directly or through an affiliate. It may help a party obtain financing from an unaffiliated third party, but only if it complies with all applicable laws, including Regulation T where relevant, and discloses its compensation in writing to that party. [9, 10]

Representation of both sides

The broker may represent both the buyer and the seller only after giving clear written disclosure of the parties it represents and obtaining written consent from both to the joint representation. [9]

Buyer groups and passive buyers

The broker may not facilitate a transaction with a group of buyers formed with its assistance to acquire the company, and it may not engage in a transfer of ownership to a passive buyer or group of passive buyers. [9] An intermediary that assembles co-investors to reach a control threshold falls outside the exemption even if the group, taken together, will control the company.

Binding a party

The broker may not bind a party to a transfer of ownership. [9] Engagement letters should state that the broker has no authority to commit either party.

WHAT THE EXEMPTION DOES AND DOES NOT COVER

The M&A broker exemption is not a general capital-raising exemption. It does not cover introducing passive investors to a company raising money, and it does not help an intermediary whose business is placing investors with issuers. A capital raise can still qualify when it is the means of a qualifying control acquisition: an issuance of new securities to a buyer who will control the company and be active in its management is a covered transfer of ownership, even though it also raises capital (Chapter 5). [9, 15, 40]

(i) Custody Receiving, holding, transmitting or having custody of the funds or securities the parties exchange	(ii) Public offerings Acting for an issuer in a public offering of a Section 12 class or by a Section 15(d) reporting issuer	(iii) Shell companies Any transaction involving a shell company, other than a business combination related shell
(iv) Providing financing Financing the transfer of ownership, directly or through an affiliate	(v) Arranging financing Third-party financing without legal compliance (including Regulation T) and written disclosure of fees	(vi) Dual representation Acting for buyer and seller without clear written disclosure and both parties' written consent
(vii) Buyer groups A group of buyers formed with the broker's assistance to acquire the company	(viii) Passive buyers A transfer of ownership to a passive buyer or group of passive buyers	(ix) Binding a party Binding either party to a transfer of ownership

Figure 4. The nine excluded activities under Section 15(b)(13)(B). Sources: [9, 10, 42].

CHAPTER 07

Structuring a Minority Investment of 25% or More

A buyer does not need to acquire the whole company for the M&A broker exemption to apply. Consider an investor that will acquire roughly 30% of a private company through a primary issuance of new voting shares by the company, with the intermediary hired and paid by the investor. That transaction can fit the M&A broker exemption: issuances are covered, buyer-side brokers are covered, and 30% of a class of voting securities would trigger the 25% control presumption. [9] Whether it actually qualifies depends on the rights attached to the stake and on the buyer's real role after closing.

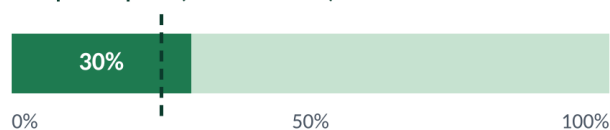
Measure the stake against a class of voting securities

For a corporation, the presumption applies if the buyer will have the right to vote, or the power to sell or direct the sale of, 25% or more of a class of voting securities. [9] The test is applied to a class; it is not a test of 25% of the company's aggregate voting power. A buyer that holds 25% or more of one class of voting securities can trigger the presumption even if that class carries a smaller share of the total vote, while an interest held entirely through non-voting securities does not count toward it. For an LLC or partnership, the test is 25% of the capital, measured by the right to receive it on dissolution or by contribution. [9]

The presumption is a presumption, not a minimum. Control means the power to direct management or policies, whether through securities, by contract or otherwise, so a buyer below 25% may still have control through contractual or other powers, and a buyer above 25% may not have it in fact. [9]

Interest in a class of voting securities

25% presumption (not a minimum)



Separately, active management in fact:

- Electing or approving executive officers
- Approving the annual budget
- An investor principal serving as an executive
- Facts showing the buyer will use these roles

Figure 5. A 30% interest in a class of voting securities triggers the 25% control presumption. Active management is a separate condition that needs its own factual support. Source: [9].

Show active management in fact

Owning 30% passively will not qualify, because active management is a condition separate from control and the exemption excludes transfers to passive buyers. [9] The statutory examples are electing executive officers, approving the annual budget, and serving as an executive or other executive manager. Governance documents can support the analysis, for example through:

- board seats, and the right to elect or approve the executive officers;
- approval rights over the annual budget; and
- an investor principal who will actually serve as an executive or manager. [9]

Inserting rights into an agreement does not by itself establish that the buyer will be active. The broker's reasonable belief should rest on facts about what the buyer intends to do and how: the people who will serve, the functions they will perform, and the buyer's practice in exercising comparable rights. Control and active management each need their own factual support. [9]

Confirm the company is eligible

Apply the eligibility tests in Chapter 5, measured for the fiscal year before the intermediary was first engaged, and keep the figures in the file. Confirm that the company is not a reporting company and not a shell company, other than a business combination related shell. [9]

Keep the intermediary inside the lines

All nine exclusions in Chapter 6 apply. Two deserve emphasis in minority deals. No buyer group may be formed with the intermediary's help, so co-investors should be the investor's own rather than recruited by the intermediary. And if the intermediary helps a party obtain third-party financing, it must comply with all applicable laws, including Regulation T where relevant, and disclose its compensation in writing to that party. [9]

Document the reasonable belief

Because the statute turns on the broker's reasonable belief, the intermediary should keep a short memorandum to file for each transaction covering the buyer's post-closing ownership and voting rights, the governance rights that show active management, the financial data used for the size test, the absence of any excluded activity, and, if securities are part of the consideration, delivery of the required information

before each recipient became legally bound. It should be updated at signing and again at closing.

If the deal changes

Structures move during negotiation. If the stake falls below 25% of a class of voting securities, the presumption no longer applies, but the buyer may still have control through contractual or other powers, and the question becomes whether the facts show it. If the buyer's role becomes passive, the exemption is unavailable whatever the percentage. [9] Reassess at each change, before the intermediary does anything further.

Changing the fee does not cure the problem. Converting a success fee after services have been performed does not erase earlier broker activity or necessarily make the compensation collectible. Any change should be prospective, should cover only services that may lawfully be performed without registration, and should not be treated as resolving registration simply because the pay is no longer contingent. Engaging a registered broker-dealer is another option, subject to the limits described in Chapter 4.

A 30% stake can qualify. A passive 30% stake cannot.

CHAPTER 08

State Law Must Also Be Considered

This guide addresses federal law. State law must also be considered. The federal M&A broker exemption does not preempt state broker-dealer and agent registration requirements, and each state with jurisdiction over the intermediary or the parties applies its own rules. [10, 43] Many states have adopted some form of M&A broker relief, but the terms vary and do not always match the federal statute, and a few states regulate finders separately. An intermediary should confirm, for its own state and for each state where the company, the sellers and the buyer are located, whether

registration, a notice filing or an exemption applies. [44, 45]

State law can also reach transactions that involve no security. Some states license business brokers or treat the sale of a business as real estate brokerage; Florida, for example, includes negotiating the sale of business enterprises in its real estate broker definition. [29] Because these rules differ widely and change often, the current state rule itself, not a summary, should be checked before any fee is agreed.

CHAPTER 09

Before the Engagement: A Compliance Checklist

A well-drafted engagement agreement sets the commercial terms and records that the parties understood and respected the limits on the intermediary's role. It cannot make an intermediary's activity lawful on its own. Regulators and courts look at what the intermediary actually does, not at labels, independent-contractor clauses or status representations. Because the right terms depend on the transaction, the parties and the legal basis relied on, the agreement should be prepared by securities counsel. The checklist below identifies the facts to gather and the questions to answer before any fee is agreed.

The transaction

- Whether a security is involved, and what structure is contemplated (Chapter 1).
- The identity and location of the company, the buyer or investor, and any sellers.
- Whether the company is privately held, and its EBITDA and gross revenues for the fiscal year before the intermediary was first engaged (Chapter 5).
- Whether the buyer will control the company and be active in its management after closing (Chapter 7).

The intermediary

- Whose agent the intermediary is, who will pay it, and whether it will represent more than one side (Chapter 4).
- Its registration status, any association with a broker-dealer, and any bar, suspension or other disqualification (Chapter 5).
- Its other introduction or capital-raising activity, and how often it is paid for introductions (Chapter 2).
- Whether it operates through an entity, employs staff or markets introduction services (Chapter 2).

The role

- Exactly what the intermediary will do, and what it will not do: negotiation, advice, valuation, solicitation, sales materials, handling funds, binding a party or arranging financing (Chapters 2 and 6).
- Who will communicate with the investor or buyer after the introduction.
- How the services actually performed will be documented as the transaction proceeds.

The compensation

- How the fee is calculated and when it is earned, including whether it depends on closing or on the amount invested (Chapters 1 and 2).
- The legal basis relied on for the fee: an introduction-only role that is not broker activity, a transaction involving no security, or the M&A broker exemption, and what happens if none applies.
- How escrowed, deferred, earnout or milestone consideration will be treated.
- Whether any part of the fee will be shared with another person.

Other jurisdictions

- Each state with jurisdiction over the intermediary or the parties, and any business-broker or real estate licensing rule (Chapter 8).
- Foreign law, if any party or payment is outside the United States.

PRACTICE NOTE

Each item on this list affects how the agreement should be drafted, and some may determine whether a success fee can be paid at all. The time to answer them is before the introduction is made, not when the fee comes due.

CHAPTER 10

An Eight-Step Review

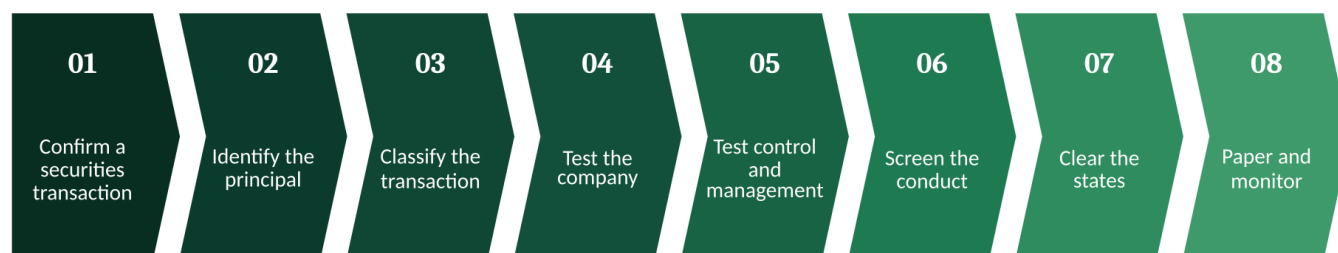


Figure 6. *A sequence for reviewing any compensated introduction in a private transaction, beginning with whether a security is involved. Sources: [8, 9, 10, 44].*

1. **Confirm a securities transaction.** Determine whether the deal involves a security at all. A business or asset acquisition may not, in which case no federal broker exemption is needed, although state business-broker or real estate licensing may still apply. If the final form is uncertain, plan for the securities case. [8, 29]
2. **Identify the principal.** Determine whose agent the intermediary is, who pays the fee and whether it will actually represent both sides. If it will, plan for written disclosure and consent.
3. **Classify the transaction.** Distinguish a transfer of control to an active buyer, which may fit the M&A broker exemption, from a capital raise from passive investors, which does not. [9]
4. **Test the company.** Confirm that it is not a reporting company or a shell company (other than a business combination related shell), and that it meets the EBITDA or revenue threshold for the fiscal year before engagement. [9]
5. **Test control and active management.** Apply the 25% presumption to each class of voting securities (or to capital for an LLC or partnership); if it is not met, test actual control through contractual or other powers. Separately, confirm facts showing that the buyer will be active in management. [9]
6. **Screen the conduct.** Check the nine excluded activities and the disqualification provision for the intermediary and its personnel. [9]
7. **Consider state law.** State registration requirements, and any business-broker or real estate licensing rules, must be considered

separately for each state with jurisdiction over the intermediary and the parties. [10, 29]

8. **Paper and monitor.** Work through the checklist in Chapter 9, have counsel document the engagement, keep a reasonable-belief memorandum where the M&A broker exemption is relied on, recheck at signing and closing, and track the December 2027 inflation adjustment and the SEC's finder rulemaking (RIN 3235-AN69). [6, 9]

Key takeaways

- There is still no general finder exemption. The SEC treats transaction-based pay as the leading indicator of broker status, but courts, including *Kramer*, look at the person's activities as a whole. [1, 2, 38]
- The 2020 proposal was never adopted. Reform momentum in 2026 has produced advisory committee recommendations, a petition and a place on the SEC's regulatory agenda, not a rule. [4, 6]
- The M&A broker exemption is a real, statutory safe harbor for control transactions in eligible private companies, on either side of the deal. A minority buyer can qualify if it will control the company (presumed at 25% of a class of voting securities, and provable by other means) and will in fact be active in management. [9]
- Start with the threshold question. If no security is involved, no federal broker exemption is needed, but other licensing rules may apply. [8, 29]
- Every state with jurisdiction must be cleared separately. [10]

CHAPTER 11

Frequently Asked Questions

Short answers to the questions clients most often ask about finders, success fees and the M&A broker exemption. Each answer is discussed in the chapter noted.

What is a finder in securities law?

A finder is a person who introduces investors, buyers or companies to one another, usually for a fee. Federal securities law has no finder exemption. Whether a finder must register as a broker-dealer depends on what the person does, how often it does it and how the fee is calculated (Chapter 2). [1, 2]

Can a finder receive a success fee without registering as a broker-dealer?

Sometimes, but it is risky. The SEC treats transaction-based compensation as a hallmark of broker activity, and a federal court of appeals has held a success-fee agreement with an unregistered broker voidable under Section 29(b). A qualifying M&A broker may earn a success fee without SEC registration, and at least one court has found that a person who only brought the parties together was not a broker (Chapters 1, 2 and 5). [2, 8, 9, 15]

What factors does the SEC consider in deciding whether a finder is a broker?

The SEC's *Guide to Broker-Dealer Registration* asks whether the person participates in solicitation, negotiation or execution; whether compensation depends on the outcome or size of the transaction; whether the person is otherwise in the business of effecting or facilitating securities transactions; and whether the person handles others' funds or securities. Courts also weigh regularity of participation, prior securities activity, involvement in negotiations, advice or valuations, and whether the person actively finds investors. No single factor controls (Chapter 2). [2, 27]

Can an individual be a broker, or only a firm?

An individual can be a broker. The Exchange Act applies to "any person," including a natural person, and many SEC registration cases are brought against individuals. Operating through an entity, employing

staff or marketing introduction services can be evidence that a person is engaged in the business, but no form of organization is decisive (Chapter 2). [2, 24, 25]

Does it matter that the investor is accredited or institutional?

Not for the intermediary's registration. Accredited investor and qualified institutional buyer status matter for the issuer's offering exemption. The only federal broker exemption keyed to institutional investors, Rule 15a-6, is available to broker-dealers located outside the United States (Chapter 2). [32]

What is the M&A broker exemption?

Section 15(b)(13) of the Securities Exchange Act of 1934, effective March 29, 2023, exempts from SEC broker-dealer registration a broker engaged solely in effecting securities transactions in connection with the transfer of ownership of an eligible privately held company. The broker must reasonably believe the buyer will control the company and be active in its management, and it must avoid nine excluded activities (Chapters 5 and 6). [9, 10]

Which companies qualify as privately held companies?

A company qualifies if it has no class of securities registered, or required to be registered, under Exchange Act Section 12, no Section 15(d) reporting obligation, and, in the fiscal year before the broker was engaged, EBITDA under \$25 million or gross revenues under \$250 million. The first inflation adjustment of those thresholds is due in late December 2027 (Chapter 5). [9]

Does a minority investment qualify for the M&A broker exemption?

It can. Control is presumed when the buyer will hold the right to vote, or to sell or direct the sale of, 25% or more of a class of voting securities, or 25% of the capital of an LLC or partnership, and control can also be shown in other ways. The buyer must separately be active in management, because a transfer to a passive buyer is excluded (Chapter 7). [9]

Does the M&A broker exemption cover raising capital?

Not generally. It does not cover introducing passive investors to a company raising money. An issuance of new shares can qualify only when it transfers control to a buyer who will be active in management (Chapter 6). [9]

Does the federal M&A broker exemption apply under state law?

No. The federal exemption does not preempt state law. State securities registration requirements, and in some states business-broker or real estate licensing laws, must be considered separately (Chapter 8). [10, 29]

Is there an SEC finder exemption in 2026?

No. The SEC proposed a conditional finder exemption in October 2020 but never adopted it. In 2026 the SEC's Small Business Capital Formation Advisory Committee recommended a limited exemption, a petition asked for rulemaking, and the SEC's regulatory agenda lists a finder rulemaking (RIN 3235-AN69) with an October 2026 target date (Chapter 3). [3, 4, 6, 26]

What did SEC v. Kramer decide?

In 2011 the U.S. District Court for the Middle District of Florida held that the SEC had not proved Kramer

acted as an unregistered broker. It found that his introduction of a registered broker to the company was nothing more than bringing the parties together, and that transaction-based compensation alone was not enough. It is a single district court decision, and the SEC has argued it should be read narrowly (Chapter 2). [2, 30]

What happens if a company pays an unregistered broker?

The engagement agreement may be voidable under Section 29(b), and the intermediary may be unable to collect its fee. The company may also face enforcement attention, disclosure questions and, depending on the facts, claims by investors (Chapter 1). [8, 13, 14]

Can an investor hire a finder to locate investments?

Yes, but the finder authorities do not help. The Paul Anka letter and the 2020 proposal were built around issuers. A success fee paid when the investment closes is the classic broker pattern; a control transaction may fit the M&A broker exemption; and screening or recommending opportunities can raise Investment Advisers Act issues (Chapter 4). [9, 18, 39]

CHAPTER 12

Conclusion

The line between a finder and a broker has never been drawn by statute or rule, and it will not be settled unless and until the SEC acts on finders. In the meantime, the law rewards care. A person who makes an occasional introduction from genuine relationships, stays out of the sale and is paid on terms that fit that limited role stands on far firmer ground than one who solicits investors, negotiates terms and collects a percentage of every deal. For transfers of control in smaller private companies, the M&A broker exemption now offers a statutory path, but only for transactions and

intermediaries that meet every condition. And state law must be cleared in every case.

Above all, the facts matter more than the labels. They should be gathered, and the engagement documented, before the introduction is made rather than after the fee is earned. Hamilton & Associates Law Group, P.A. advises companies, investors and intermediaries on finder and M&A broker engagements and prepares the agreements that document them.

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