

## Welcoming “Finders” in from the Cold in California

As of January 1, 2016, a person defined as a "finder" will become exempt from the broker-dealer provisions of the California Securities Law of 1968, as amended. Under that law, the Commissioner of Business Oversight regulates the activities of broker-dealers. [Assembly Bill No. 667](#), Section 25206.1 will exempt a "finder" from registration with the Commissioner as a broker-dealer. Section 25206.1 provides that a "finder" has to be a natural person who, for direct or indirect compensation, introduces or refers one or more accredited investors to an issuer or an issuer to one or more accredited investors solely for the purpose of a potential offer or sale of securities of the issuer in California. A finder cannot:

- Provide services in a transaction that exceeds a purchase price of \$15 million;
- Participate in negotiating the terms of the offer or sale;
- Advise any party to the transaction regarding the value of the securities or the advisability of investing in securities;
- Conduct any due diligence on the part of any party to the transaction;
- Sell or offer to sell any securities of the issuer owned by the finder;
- Receive possession or custody of any funds;
- Knowingly receive compensation in connection with any offer or sale unless the sale is qualified or unless the transaction is exempt or not otherwise subject to qualification; or
- Make any disclosure to a potential purchase exempt identifying items about the issuer.

A finder must register with the Commissioner of Business Oversight, re-up his registration annually, and make a number of affirmative representations. A finder must obtain the informed written consent of each person so referred that must contain specific items of disclosure, and the finder must preserve records for a period of five years documenting his compliance. A finder who fails to satisfy all of the conditions is subject to the remedies set forth in Section 25501.5. As curious readers will already know, the SEC staff has taken a similar position usually referred to as the "private M&A broker" [no-enforcement letter](#). A person attempting to comply with the SEC's "private M&A broker" letter and the new California "finders" legislation will discover, among other things, that: (i) California imposes a limit of \$15 million on the transaction, while the SEC imposes none, (ii) only a natural person is eligible to rely on the California "finders" legislation, (iii) the SEC's letter is limited to M&A transactions where the acquirer is in control afterwards, and (iv) California provides express remedies against a non-complying "finder" while a person failing to comply with the SEC's no-enforcement letter is left in limbo as to what remedy, if any, may apply. Just registering as a "finder" may not be enough. Due to a quirk in state law, a California M&A broker may also need to register as a real estate broker, which has its own "finder" exemption. In addition, M&A activity involving California state or local governmental entities could be subject to lobbyist registration requirements. There is, of course, no reason why state law and Federal law could not differ in some respects. Nonetheless, it is still hard to decide whether, all things considered, Santa Claus (in the guise of the California legislature) has left "finders" in California a shiny new present or a big lump of coal. Ho, ho, ho.

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