

Section 4(c) of the 1933 Act: The Orphan Exception from Broker-Dealer Registration - Part One

We have previously discussed the long-running saga regarding whether transaction-based compensation related to non-public sales of securities require registration as a broker-dealer under the Securities and Exchange Act of 1934 ("Exchange Act"). Our discussions have included (i) [the tricks and treats of the SEC's Crowdfunding release last Halloween](#), (ii) [California's exemption for "finders,"](#) and (iii) a [Christmas present for resellers of privately placed securities in last year's Fixing America's Surface Transportation \(FAST\) Act](#). As a precursor to any of this, Congress added Section 4(b)(1) [now treated as if it had been properly renumbered as [Section 4\(c\)](#) by the FAST Act] to the Securities Act of 1933 ("1933 Act") describing circumstances in which a person involved in a Rule 506 offering under Regulation D would not have to register as a broker-dealer under Section 15(a)(1) of the Exchange Act. In context, it is surprising that just one aspect of what is often a very difficult status question under the Exchange Act would be addressed, albeit even in part, by an amendment to the 1933 Act. (As we previously suggested regarding the amendments to the Investment Advisers Act that appeared in the FAST Act, this must represent the fruits of some highly sophisticated special pleading.) It probably will not be obvious to the interested person reading Section 15(a)(1) of the Exchange Act to look for exemptions in Section 4(c) of the 1933 Act. To assist in this, the first part of this post will describe Section 4(c), and the second part will try to discern who Section 4(c) might help avoid registration as a broker-dealer. Section 4(c) provides that no person who meets the following conditions will be required to register as a broker-dealer under the Exchange Act in order to offer and sell securities in compliance with Rule 506.

1. The person (and each person associated with the person) cannot receive any compensation in connection with the purchase or sale of a security;
2. The person (and each person associated with the person) cannot have possession of customer funds or securities in connection with the purchase of sale of a security; and
3. The person cannot be subject to a statutory disqualification.

Section 4(c) also states that:

- the offer can occur through a platform or other mechanism that permits general solicitations, general advertisements, or similar or related activities, whether online, in person, or through any other means;
- the person (or any person associated with that person) may co-invest in securities; and
- the person (or any person associated with that person) may provide ancillary services with respect to the securities.

The term "ancillary services" is defined to mean (A) the provision of due diligence services in connection with the offer, sale, purchase, or negotiation of such security so long as such services do not include, for separate compensation, investment advice or recommendations to issuers or investors, and (B) the provision of standardized documents to the issuers and investors, so long as the person does not negotiate the terms and issuers are not required to use the standardized documents as a condition of using the service.

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