

# THE SO-CALLED “ISSUER EXEMPTION”



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# Broker Registration Requirement

Broker registration requirement under Section 15(a)

- It is unlawful for any unregistered broker or dealer to effect any transactions in or otherwise engage in the business of purchasing or selling securities

# Broker

Section 3(a)(4) of the Exchange Act defines a broker as “any person engaged in the business of effecting transactions in securities for the account of others.”

- Brokers are required to register with the SEC and any states they conduct business
- Brokers are required to become members of FINRA
- Brokers are subject to extensive regulatory requirements and oversight.

# Issuer Exemption

Rule 3(a)(4)-1 was adopted by the SEC in July 1985 which provided a non-exclusive ‘safe harbour’ under which persons associated with an issuer of securities, who participate in sales of that issuer’s securities, will not be considered to be acting as a ‘broker’. Accordingly, these persons would not be required to register with the Commission pursuant to Section 15 of the Exchange Act (Broker registration).

The Commission is adopting the Rule in order to provide guidance concerning the applicability of the Broker-Dealer registration requirement in situations where an issuer chooses to sell its securities through its associated persons.

# Issuer Exemption

Rule 3(a)(4)-1 simply means that an issuer who acts on its own behalf is not effecting transactions “for the account of others” and therefore doesn’t meet the definition of “Broker.”

The Issuer Exemption is a non-exclusive ‘Safe Harbour’ from Broker registration but is not the exclusive means by which persons associated with the issuer may sell that issuer’s securities w/out registering as a Broker.

# Issuer Exemption: Pre-conditions

Rule 3(a)(4)-1 requires that the issuer meet 3 pre-conditions and (1 of 3) alternative conditions.

Pre-conditions:

- ~~1. Must not be subject to a statutory disqualification~~
- ~~2. Must not be associated with a Broker Dealer~~
3. Must not receive commissions or transaction based compensation (directly or indirectly).

# Issuer Exemption: Alternative Conditions

Rule 3(a)(4)-1 requires that the issuer meet 3 pre-conditions AND (1 of 3) alternative conditions.

Alternative-conditions:

1. ~~Associated persons may offer securities to financial institutions.  
(because of their financial sophistication)~~
2. Associated persons must primarily perform duties for the issuer other than in connection with transactions in securities... and have not participated in selling securities on behalf of any issuer within preceding 12 months. Must not be subject to a statutory disqualification.
3. Associated persons who conduct passive sales efforts (ministerial or clerical work).

# Issuer Exemption

The SEC believes that BD registration is appropriate and necessary for persons who are regularly engaged in the sale of securities, such as promoters of limited partnership interests. The ‘safe harbor’ conditions rely on:

- a) Associated persons not having sold securities of any issuer during the preceding 12 months.
- b) Associated persons performing substantial other duties on behalf of the issuer or who conduct passive sales efforts (ministerial or clerical work).



# Issuer Exemption

Potentially applicable to:

- Regional Centers and Regional Center’s employees
- Sponsor and Sponsor’s employees
- Marketing firms

# Issuer Exemption

Raising funds through an unregistered Broker-Dealer involves risk of rescission to:

- Unregistered Broker Dealer
- Issuer