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Revenge of the Rat Pack; SEC Proposes Finders Exemption

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The U.S. Securities and Exchange Commission (the “SEC”) recently proposed a new, conditional exemption from registration as a broker for individuals who are “finders” that connect accredited investors with issuers looking to raise capital.[[1]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn1) If adopted, the exemption will change the longstanding tenet that accepting any transaction-based compensation in the sale of securities makes one a broker that, absent an exception, will need to register as a broker.

In 1991, Paul Anka received a no-action letter from the SEC that legitimized the finder concept – essentially that one could sell their Rolodex for use in the sale of securities without registering as a broker-dealer.[[2]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn2) In his 2013 autobiography, Mr. Anka, an entertainer and member of Frank Sinatra’s Rat Pack, discussed his association with the mafia.[[3]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn3) Many securities lawyers have viewed the fact Mr. Anka had supposed mob ties yet was able to get the no-action letter with a degree of humor. Although the Paul Anka letter is part of the SEC staff’s guidance, in a number of public speeches, the SEC staff has indicated that it would not provide no-action relief under a comparable fact pattern regarding compensation arrangements today.[[4]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn4) The SEC’s proposed finders exemption is an effort to address – and expand –the no-action letter granted to the crooner that has outlived the Rat Pack.

SEC Chairman Jay Clayton noted that the proposed exemption would “bring clarity to finders’ regulatory status in a tailored manner that addresses the capital formation needs of certain smaller issuers while preserving investor protections.” The proposal will expand the activities that finders can conduct without fear of being required to register as a broker. To understand the proposed finders exemption it is necessary to understand what is a broker.

**I. What is a Broker?**

Section 3(a)(4)(A) of the Securities Exchange Act of 1934 (the “Exchange Act”) defines “broker” broadly as “*any person engaged in the business of effecting transactions in securities for the account of others*.”  The courts and the SEC have taken an expansive view of the scope of these terms. Often, courts apply a “facts and circumstances” analysis in evaluating whether a person has acted as a broker, with no single element being dispositive. Courts and the SEC have determined that a person “effects transactions in securities” if the person participates in such transactions “at key points in the chain of distribution.”[[5]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn5) According to the SEC, such participation may include, helping an issuer to identify potential purchasers of securities.[[6]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn6)

*A.****Engaged in the Business***

Courts have read, “engaged in the business” as connoting a certain regularity of participation in purchasing and selling activities rather than a few isolated transactions.[[7]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn7) Two factors are important in determining whether there is “regularity of business”: (i) the number of transactions and clients,[[8]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn8) and (ii) the dollar amount of securities sold, as well as the extent to which advertisement and investor solicitation were used.[[9]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn9) However, neither of these factors is determinative.

While a single isolated advertisement by a person seeking to purchase or sell securities may not in all cases cause a person to be a “broker,” transactions by a person as the first step in a larger enterprise could still be found to meet the regularity threshold.[[10]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn10) The dollar amount of the transactions can indicate regularity, although courts have held that there is no requirement that such activity be a person’s principal business or principal source of income.[[11]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn11)

The SEC has stated:

[N]othing . . . would warrant a conclusion that a person is not “engaged in the business” merely because his securities activities are only a small part of his total business activities, or merely because his income from such activities is only a small portion of his total income. On the contrary, if the securities activities are engaged in for commissions or other compensation with sufficient recurrence to justify the inference that the activities are part of the person’s business, he will be deemed to be “engaged in the business.”[[12]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn12)

Besides “regularity of business,” courts and the SEC have identified several other factors that indicate that a person is “engaged in the business.” These factors include: (1) receiving transaction-related compensation;[[13]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn13) (2) holding oneself out as a broker, as executing trades or as assisting others in settling securities transactions;[[14]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn14) and (3) soliciting securities transactions.[[15]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn15)

*B.****For the Account of Others***

In order to be considered a “broker,” a person must be effecting transactions in securities for others. As a result, a firm effecting transaction solely on its own behalf is generally not considered to be acting as a “broker.” The SEC has taken the position that a firm may be acting as a broker where it affects transactions in securities nominally on its own behalf, but where those transactions are at the direction of individual traders that hold membership interests in the firm, effectively acting as the firm’s customers.

*C.****Transaction-based Compensation***

In the SEC’s no-action guidance and enforcement actions, receiving commissions or other transaction-related compensation is one of the determinative factors in deciding whether a person is a “broker” subject to the registration requirements under the Exchange Act.[[16]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn16) Transaction-related compensation refers to compensation based, directly or indirectly, on the size, value or completion of any securities transactions.[[17]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn17) The SEC typically looks behind the terms of a compensation arrangement to determine its economic substance, that is, to determine whether it is transaction-related. Thus, a fee arrangement is designed to compensate a person for what that person would have received if the person directly received transaction-related compensation (for example, a flat fee that is recalculated periodically to reflect an increase or decrease in the number of transactions) could be the equivalent of transaction-related compensation. In this regard, a flat fee representing a percentage of expected future commissions could be considered transaction-related. The receipt of transaction-based compensation often indicates that a person is engaged in the business of effecting transactions in securities.[[18]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn18) Absent an exemption, a person that receives commissions or other transaction-related compensation in connection with securities-based activities generally would be viewed as a broker-dealer.[[19]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn19)

Whether a person receives transaction-related compensation is often an important factor – if not the most important factor – in the SEC’s decision to grant or deny no-action relief to, or bring enforcement actions against, persons providing services to broker-dealers. For example, the SEC staff has denied no-action relief to personal services companies that are established by registered representatives of a broker-dealer and receive commissions earned by the registered representatives from the broker-dealer.[[20]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn20) Although the SEC has granted no-action relief under limited circumstances in which a celebrity acting as finder “sold his Rolodex,” and would receive a success-based fee, it has since publicly distanced itself from that precedent.[[21]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn21)

*D.****Finders***

The SEC staff has historically recognized a very narrow exception to the broker-dealer registration requirements for finders. A “finder” is a person who places potential buyers and sellers of securities in contact with one another for a fee. There is no “finder exception” in the Exchange Act or SEC rules; instead, the finder analysis is based on SEC no-action letters. The SEC’s decision to grant no-action treatment in some cases to permit finders to engage in limited activities without registration as broker-dealers is presumably based on the idea that certain limited activities in relation to securities transactions do not create risks sufficient to warrant registration.

The SEC’s guidance on “Who is a ‘Broker’” currently includes “finders,” “business brokers,” and individuals who ‘[find] investors for "issuers" (entities issuing securities), even in a "consultant" capacity; or [engage] in, or [find] investors for, venture capital or "angel" financings, including private placements.”[[22]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn22) In an industry where a well-stocked Rolodex can often lead to comfortable financial support and handshake investment deals are struck over drinks at happy hours or conferences, the identity of a “broker” is becoming less and less defined.

*E.****Consequences of Failure to Register as a Broker***

The potentially severe consequences of acting as an unregistered broker include potential bars from the industry or civil or criminal penalties. The potential consequences of using an unregistered broker in offering include rescission of the offering.

**II. Proposed Finders Exemption**

The proposed exemption will create two classes of finders - Tier I Finders and Tier II Finders (each a “Finder” and, collectively, the “Finders”) - that will not be required to register as brokers, subject to conditions tailored to their respective activities. By separating these classes of finders, the SEC hopes to create a clear distinction between the regulated activities of brokers and the unregulated activities of finders that will comply with the exemption. The proposed exemption will permit a finder to accept transaction-based compensation subject to specific requirements.

*A.****Tier I Finders***

Tier I Finders will be permitted to provide contact information of potential investors in connection with only a *single* capital-raising transaction by a *single* issuer in a twelve-month period. Tier I Finders could not have any contact with potential investors about an issuer. A Tier I Finder that complies with all of the conditions of the exemption may receive transaction-based compensation for the limited services described above without being required to register as a broker under Section 15(a) of the Exchange Act. The SEC noted, “[t]he proposed exemption is intended to provide a safe harbor from the broker registration requirement to market participants for the limited activities described herein.”[[23]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn23)

*B.****Tier II Finders***

Tier II Finders will be permitted to solicit investors on behalf of an issuer as long as the solicitation is limited to: “(i) identifying, screening and contacting potential investors; (ii) distributing issuer offering materials to investors; (iii) discussing issuer information included in any offering materials, provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment; and (iv) arranging or participating in meetings with the issuer and investor.”

*C.****Conditions of the Proposed Exemption***

The exemption from broker registration for either category of Finder will only be available when:

* the issuer is not required to file reports under Section 13 or Section 15(d) of the Exchange Act;
* the issuer is seeking to conduct the securities offering in reliance on an applicable exemption from registration under the Securities Act of 1933;
* the Finder does not engage in general solicitation;
* the potential investor is an “accredited investor” as defined in Rule 501 of Regulation D or the Finder has a reasonable belief that the potential investor is an “accredited investor”;
* ***the Finder provides services pursuant to a written agreement with the issuer that includes a description of the services provided and associated compensation;***
* the Finder is not an associated person of a broker-dealer; and
* the Finder is not subject to statutory disqualification, as that term is defined in Section 3(a)(39) of the Exchange Act, at the time of his or her participation. [[24]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn24)

Notably, the Finders exemption will only be available when the potential investors are accredited, or if the Finders have reason to believe they are accredited. Tier II Finders will be required to make certain disclosures, including disclosures of the Finder’s role and compensation, which must be made prior to or at the time of the solicitation. A Tier II Finder is not subject to the Tier I Finder’s limitation of participation in only one capital raising transaction by a single issuer in a 12-month period.

*D.****Tier II Finder Requirements***

A Tier II Finder will need to provide a potential investor, prior to or at the time of the solicitation, disclosures that include: (1) the name of the Tier II Finder; (2) the name of the issuer; (3) the description of the relationship between the Tier II Finder and the issuer, including any affiliation; (4) a statement that the Tier II Finder will be compensated for his or her solicitation activities by the issuer and a description of the terms of such compensation arrangement; (5) any material conflicts of interest resulting from the arrangement or relationship between the Tier II Finder and the issuer; and (6) an affirmative statement that the Tier II Finder is acting as an agent of the issuer, is not acting as an associated person of a broker-dealer and is not undertaking a role to act in the investor’s best interest. Tier II Finders may be able to provide such disclosure orally, provided that the oral disclosure is supplemented by written disclosure and satisfies all of the disclosure requirements listed above no later than the time of any related investment in the issuer’s securities. While the SEC is requiring the disclosures be written, we believe this can be satisfied through either paper or electronic means.

For purposes of the proposed exemption, the SEC believes the delivery of the disclosure would be evidenced by the acknowledgment the Tier II Finder must obtain from the investor. The acknowledgment must be obtained prior to or at the time of any investment in the issuer’s securities. The written acknowledgment must be a dated receipt of the Tier II Finder’s required disclosures. The SEC believes the acknowledgment is important as it helps ensure that the investor received the required disclosures.

*E.****Limitations on Finders***

Since a Finder will engage in a limited scope of securities-related activities with a limited set of investors, such activities will be subject to conditions defined by the level of activity. Finders cannot engage in any of the following activities:

* structure of play a role in transactions;
* handle customer Funds;
* bind the issuer or investor;
* participate in the preparation of any sales materials;
* perform any independent analysis of the sale;
* engage in any “due diligence” activities;
* assist or provide financing for such purchases; or
* provide advice as to the valuation or financial advisability of the investment.

Each of these activities are functions of a broker and a party engaging in such activities would be required to register as a broker.

*F.****The Proposed Exemption Only Applies to Activities in the Specific Tier***

The proposed exemption will only apply with respect to the defined activities for each tier of Finder and is limited to activities solely in connection with primary offerings. A Finder cannot rely on the proposed exemption to engage in broker activity beyond the scope of the proposed exemption, such as to facilitate a registered offering, a resale of securities or the sale of securities to investors that are not accredited investors or that the Finder does not have a reasonable belief are accredited investors.

*G.****Compensation***

Because Tier II Finders may participate in a wider range of activities and have the potential to engage in more offerings with issuers and investors, the SEC believes that heightened requirements are appropriate. A Tier II Finder that complies with all of the conditions of the proposed exemption may receive transaction-based compensation for services provided in connection with the activities described above without being required to register as a broker under Section 15(a) of the Exchange Act.

If a Finder fails to comply with any of the relevant conditions (for example, the Finder engages in general solicitation of potential investors), the Finder will not be able to rely on the proposed exemption. The inability to rely on the proposed exemption means that the Finder may be required to register with the SEC as a broker.

**III. State Law**

As a general matter, broker-dealers are regulated at both the state and federal level, and one regime may require registration even if the other does not. The proposed exemption will not preempt state laws that address the regulation of brokers and finders. A number of states have laws that require the registration of finders and brokers that may be inconsistent with the proposed finders exemption. For example, while there is a finders exception under California law, the activities in which a finder may engage are much more restricted than those permitted under the proposed federal exemption.[[25]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftn25) A firm that relies on the proposed finders exemption still may be required to register as a broker or a finder in one or more states.

**IV. Conclusion**

While the stated intent of the proposal is to allow start-ups and other emerging companies to raise capital, the only limitation on the type of company that may utilize a Finder is that it must not be a reporting company under the Exchange Act. Thus, “unicorns” and other large private companies, as well as private investment funds such as venture capital funds, pledge funds and private equity funds, may be able to use Finders. On the other hand, “microcap” reporting companies and other startups that are subject to periodic reporting requirements would not be able to use Finders, even if the issuer’s stock is not listed on an exchange or other trading market.

Should the proposed finders exemption be approved by the SEC, any party considering relying on the exemption should proceed with caution. As the SEC often notes, whether a person is a broker-dealer will depend on the facts and circumstances and the SEC. will closely scrutinize reliance on the proposed exemption.

The comment period for the proposed conditional exemption expires on November 12, 2020. While the formal rulemaking process normally takes many months or longer to get from a proposed rule to an effective one, the exemptive order process is much faster, leaving open the possibility that this could become a final order before the end of the year.

[[1]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref1) *SEC Proposes Conditional Exemption for Finders Assisting Small Businesses with Capital Raising*, U.S. Securities and Exchange SEC (Oct. 7, 2020) (“Proposed Finders Exemption”), 85 FR 64546 (Oct. 10, 2020), *available at:*<https://www.sec.gov/news/press-release/2020-248>.

[[2]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref2) Paul Anka, SEC No-Action Letter (July 24, 1991) (granting no-action relief despite the fact that Anka received a transaction-based finder’s fee for units sold either to Anka himself or to investors he identified without any involvement of Anka in the sales.

[[3]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref3) Paul Anka with David Dalton, *My Way* (2013) (noting "Frank [Sinatra] was a singer, who may have all these mob connections but he wasn't a mob guy. He was an entertainer.").

[[4]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref4) *See* Comments by Kristina Fausti, Special Counsel, Office of Chief Counsel, SEC Division of Trading and Markets, at the Private Placement Broker and M&A Broker Panel at the SEC’s Forum on Small Business Capital Formation (Nov. 20, 2008). The SEC has argued that “there is no ‘finder’ exception.” Brief for Appellee Securities and Exchange SEC at 28, SEC v. Collyard et al. (8th Cir. June 3, 2016) (No. 16-1405); *see also* Brumberg, Mackey & Wall, P.L.C., SEC Denial of No-Action Request (May 17, 2010); John W. Loofbourrow Associates, Inc., SEC Denial of No-Action Request (June 29, 2006).

[[5]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref5) *See* Mass. Fin. Servs., Inc. v. Sec. Inv’r Prot. Corp., 411 F. Supp. 411, 415 (D. Mass.), *aff’d,* 545 F.2d 754 (1st Cir. 1976), *cert. denied,*431 U.S. 904 (1977); *see also SEC v. Nat’l Exec. Planners, Ltd.,* 503 F. Supp. 1066, 1073 (M.D.N.C. 1980); Transfer Online, SEC Denial of No-Action Request (May 3, 2000).

[[6]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref6) *See, e.g.,* David W. Blass, Chief Counsel, Division of Trading and Markets, SEC, Remarks to American Bar Association, Trading and Markets Subcommittee (Apr. 5, 2013); *see also* Strengthening the SEC’s Requirements Regarding Auditor Independence, SEC Release No. 34-47265, at n.82 (Jan. 28, 2003) (noting that an accounting firm that helps an issuer identify potential purchasers of securities may be “effecting transactions” and acting as a broker).

[[7]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref7) *SEC v. Am. Inst. Counselors,* Fed. Sec. L. Rep. (CCH) ¶ 95,388 (D.D.C. 1975); *see also SEC v. Kenton Capital, Ltd.,* 69 F. Supp. 2d 1 (D.D.C. 1998); *SEC v. Hansen,* 1984 U.S. Dist. LEXIS 17835 (S.D.N.Y. Apr. 6, 1984); *SEC v. Nat’l Exec. Planners, Ltd.,* 503 F. Supp. 1066, 1073 (M.D.N.C. 1980); *Mass. Fin. Servs., Inc. v. Sec. Inv’r Prot. Corp.,*411 F. Supp. 411, 415 (D. Mass.), *aff’d,* 545 F.2d 754 (1st Cir. 1976), *cert. denied,* 431 U.S. 904 (1977).

[[8]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref8) *SEC v. Margolin,* 1992 U.S. Dist. LEXIS 14872 (S.D.N.Y. Sept. 30, 1992); *Landegger v. Cohen*, No. 11-cv-01760-WJM-CBS (D. Colo. Sept. 30, 2013) (declining to find that participating in seven transactions could not be sufficient regularity to constitute acting as a broker).

[[9]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref9) *Nat’l Exec. Planners,* 503 F. Supp. at 1073 (National Executive Planners solicited clients actively, and sold $4,300,000.00 worth of TVM instruments. NEP thus had a certain regularity of participation in securities transactions at key points in the chain of distribution); Kenton Capital Ltd., 69 F. Supp. 2d at 13. (citing *SEC v. Deyon*, 977 F. Supp. 510, 518 (D. Me. 1997).

[[10]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref10) *Kenton Capital, Ltd.,* 69 F. Supp. 2d at 13 (defendants’ securities transactions were not a single, isolated transaction, but rather the first step in a larger enterprise).

[[11]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref11) *See* *UFITEC v. Carter*, 20 Cal. 3d 238, 254 (1977).

[[12]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref12) InTouch Global, LLC, SEC No-Action Letter (Nov. 14, 1995).

[[13]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref13) *See* *SEC v. Martino,* 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003); BondGlobe, Inc., SEC Denial of No-Action Request (Feb. 6, 2001); Progressive Technology Inc., SEC Denial of No-Action Request (Oct. 11, 2000); BD Advantage, Inc., SEC Denial of No-Action Request (Oct. 11, 2000); Transfer Online, SEC Denial of No-Action Request (May 3, 2000).

[[14]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref14) *See* Progressive Technology Inc., SEC Denial of No-Action Request (Oct. 11, 2000); BD Advantage, Inc., SEC Denial of No-Action Request (Oct. 11, 2000); Transfer Online, SEC Denial of No-Action Request (May 3, 2000).

[[15]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref15) *See, e.g., SEC v. Deyon,* 977 F. Supp. 510 (D. Me. 1997), *aff’d,*201 F.3d 428 (1st Cir. 1998) (both defendants solicited investors by phone and in person); *SEC v. Century Inv. Transfer Corp.,* 1971 U.S. Dist. LEXIS 11364, at \*13 (S.D.N.Y. Oct. 5, 1971) (defendant “engaged in the brokerage business” by soliciting customers through ads in the Wall Street Journal).

[[16]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref16) *See* Wolff Juall Investments, LLC, SEC Denial of No-Action Request (May 17, 2005); Birchtree Financial Services, Inc., SEC Denial of No-Action Request (Sept. 22, 1998); Vanasco, Wayne & Genelly, SEC Interpretive Letter (Feb. 17, 1999); SEC v. FTC Capital Mkts., Inc., No. 09-cv-4755, 2010 U.S. Dist. LEXIS 65417 (S.D.N.Y. May 20, 2009); *SEC v. UBS AG*, No. 100:09-CV-00316, 2009 U.S. Dist. LEXIS 123034 (D.D.C. Feb. 18, 2009); *SEC v. Milken,* 98 Civ. 1398 (S.D.N.Y. Feb. 26, 1998).

[[17]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref17) *See* GlobalTec Solutions, LLP, SEC No-Action Letter (Dec. 28, 2005).

[[18]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref18) *See* SEC v. Margolin, 1992 U.S. Dist. LEXIS 14872 (S.D.N.Y. Sept. 30, 1992); BondGlobe, Inc., SEC Denial of No-Action Request (Feb. 6, 2001); Progressive Technology Inc., SEC Denial of No-Action Request (Oct. 11, 2000); BD Advantage, Inc., SEC Denial of No-Action Request (Oct. 11, 2000); Transfer Online, SEC Denial of No-Action Request (May 3, 2000).

[[19]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref19) *See* *SEC v. FTC Capital Mkts., Inc.,* No. 09-cv-4755, 2010 U.S. Dist. LEXIS 65417 (S.D.N.Y. May 20, 2009); SEC v. UBS AG, 100:09-CV00316, 2009 U.S. Dist. LEXIS 123034 (D.D.C. Feb. 18, 2009); Birchtree Financial Services, Inc., SEC Denial of No-Action Request (Sept. 22, 1998); Vanasco, Wayne & Genelly, SEC Interpretive Letter (Feb. 17, 1999). *But see* SEC v. Kramer, 778 F. Supp. 2d 1320 (M.D. Fla. 2011) (finding that a person’s receipt of transaction-based compensation, without engaging in certain other activities, did not constitute acting as a broker).

[[20]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref20) *See, e.g.,* Wolff Juall Investments, LLC, SEC Denial of No-Action Request (May 17, 2005).

[[21]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref21) *See* Paul Anka, SEC No-Action Letter (July 24, 1991).

[[22]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref22) *Guide to Broker-Dealer Registration*, Division of Trading and Markets, U.S. Securities and Exchange SEC (April 2008), *available at:* <https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html>.

[[23]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref23) Proposed Finders Exemption.

[[24]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref24) A chart format overview of permissible activities, requirements and limitations under the proposed tiers of finder is available at <https://www.sec.gov/files/overview-chart-of-finders.pdf>.

[[25]](https://www.polsinelli.com/publications/file:/C:/Users/LCDAG/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/JWYSY6M1/Finders%20Exemption%20Blog%20Post%20DLM%20edits.docx" \l "_ftnref25)             CA Corp Code § 25206.1.

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