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

My [first post](#) discussed the requirements for the Section 4(c) exemption from broker-dealer registration added by the JOBS Act. This second part will apply Section 4(c) of the Securities Act of 1933 to a number of situations where questions can be raised whether the activities require registration as a broker-dealer. Person Acting as A Finder in Selling Securities or Sourcing Investments for a Private Investment Company The prohibition in Section 4(c)(1) on receipt of transaction-based compensation and the prohibition on receipt of separate compensation for investment advice or recommendations to issuers or investors should make this new section unavailable or unattractive to this category of person. Private M&A Broker The same prohibitions on receipt of transaction-based compensation and separate compensation would also make this new section unavailable or unattractive to this category of person. AngelList-Like Websites Fundamental elements of the [AngelList no-action letter](#) are that AngelList is a registered investment adviser that is compensated through a "carried" interest and does not charge transaction-based compensation. The other conditions in the AngelList no-action letter were designed to keep AngelList from performing any other kind of activity that might be characterized as part of the bundle of services that a broker-dealer normally provides. An AngelList-type entity should be able to satisfy all of the elements of Section 4(c). If this analysis is correct, Section 4(c) would seem to codify the AngelList no-action letter and provide protection against any possibility that the Division of Trading and Markets, or the SEC itself, would seek to reconsider the wisdom of the not-required-to-register-as-a-broker legal position expressed in the AngelList no-action letter. California Finders Legislation California would permit a registered finder to receive transaction-based compensation, so the prohibitions described above would also make this section unattractive to this category of person. Moreover, Section 4(c) would also not appear to pre-empt state registration or regulation of persons who would otherwise be treated as broker-dealers. BlackStreet Enforcement Case One of the principal allegations in this SEC [enforcement case](#) was that the investment adviser was receiving transaction-based compensation for investment-banking like services. The prohibitions described above would not have protected this category of person from being the object of an SEC enforcement case for non-registration as a broker-dealer. Issuers There is a so-called "issuer" exemption from registration as a broker-dealer, and Rule 3a4-1 under the Exchange Act exempts employees of an issuer who, among other things, do not receive transaction-based compensation and do have other employee duties other than engaging in the sale or repurchase of securities. While certain aspects of Section 4(c) would be superfluous to the normal activities of an issuer that selling or repurchasing its own shares, or its employees, it is possible that an issuer (and/or its employees) would be able to take advantage of Section 4(c) and achieve certainty regarding its exempt status.

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