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New York State Proposes to Regulate "Finders" as Broker-Dealers

The Investor Protection Bureau of the New York Attorney General's Office ("IPB") recently [proposed](#) a series of changes to its rules regulating broker-dealers. The proposal would require "finders" in New York to register as broker-dealers and pass broker-dealer examinations. In doing so, IPB would codify its regulation of finders in a manner similar to several other states.

Regulation of "Finders"

Generally, a "finder" is a party that receives transaction-based compensation for connecting buyers and sellers of securities. Receiving transaction-based compensation in connection with securities transactions is often dispositive on whether broker-dealer registration is required. If a finder is not a Securities and Exchange Commission ("SEC") registered broker-dealer and FINRA member, the finder must rely on an exception from federal registration. The [2014 M&A Broker letter](#) from the SEC staff provides narrow relief from such registration for certain finders. However, many states have not adopted the SEC's approach, and therefore, even when finders can rely on this letter, finders would still need to assess compliance with blue sky laws. Unfortunately, there is no consistency at the state level, and many states fail to address finder activity directly. Some states have codified the requirements for "finders" with respect to broker-dealer registration or behavior. For example:

- [California](#) has defined "finder" and provided a limited registration exemption for qualifying finders. To rely on the exemption, finders must meet certain conditions and file a Statement of Information with California's Department of Business Oversight.
- [Michigan](#) has [defined "finder"](#) and the Michigan Department of Licensing and Regulatory Affairs has excluded "finders" by [rule](#) from the definition of "broker-dealer."
- [South Dakota](#) has defined "finder" and excluded it from the definition of "broker-dealer."
- [Texas](#) has defined "finder," and [codified](#) certain prohibitions, as well as disclosure and registration requirements.

The New York Proposal

IPB's [proposal](#) defines "finder" as a:

person, firm, association, or corporation who as part of a regular business, engages in the business of effecting transactions in securities for the account of others within or from [New York State], to the limited extent that such person, firm, association, or corporation receives compensation for introducing a prospective investor or investors to any broker, dealer or salesperson."

Under the proposal, if a person or company meets the definition of "finder," the finder would be subject to registration requirements in New York State based on the finder's affiliation with a registered broker-dealer:

- A finder not associated with a registered broker-dealer would file a New York [Form M-1](#) (a Broker/Dealer Statement) and follow the supplemental filing requirements of broker-dealers.
- A finder associated with a non-FINRA member broker-dealer would file a New York [Form M-2](#) (a Salesperson Statement).

- A finder associated with a FINRA member broker-dealer would file a [Form U4](#) (a Uniform Application for Securities Industry Registration or Transfer), which is consistent with FINRA rules.

In addition, the IPB proposal would require that finders meet the examination requirements for broker-dealers under New York statute (e.g., uniform securities agent state law examination ("Series 63") or the uniform combined state law examination ("Series 66")). Under the proposal the finder registration period for non-FINRA members would be four years after which time the finder would need to re-register. The finder registrations for FINRA members would follow existing New York [requirements](#) for broker-dealers or salespersons.

Conclusion

IPB published its proposal in the New York State Register on April 15, 2020, and is accepting comments until June 15, 2020. If finalized, IPB would add New York to the list of states that have imposed some degree of state-regulation upon finders.

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