



Between November 2017 and November 2021, three individuals actively solicited investments in securities, including providing marketing materials and advising on the merits of the investment, and receiving commissions for their sales. In May 2022, the [U.S. Securities and Exchange Commission \(SEC\) halted the activities](#) of the individual defendants involved in May 2022, for operating a vast network of sales agents in connection with a \$410 million fraud. Because such unauthorized activity is hard to contain, now in 2023, the SEC has followed up on its previous action by [charging the three sales agents](#) of the unregistered broker-dealer with fraud and unregistered broker activity.

As highlighted by the SEC's recent complaint, sales agents must obtain licenses and broker-dealer registrations, pursuant to Section 15(a) of the Exchange Act, to engage in the business of facilitating securities transactions. While broker-dealer registration requirements are based on a [facts and circumstances analysis](#), when an

individual is advising on the merits, passing along marketing materials, and receiving compensation tied to those activities, there is likely to be a presumption that registration is required.

## **Broker Registration Requirements**

The Exchange Act requires securities brokers to register with the SEC or, if they are individuals, to be associated with a brokerage firm registered with the SEC. The types of activities that may require broker-dealer registration based on the full set of facts and circumstances include:

- Participating in important parts of a securities transaction, including solicitation, negotiation, or execution of the transaction.
- Receiving compensation for participation in the transaction dependent upon, or related to, the outcome or size of the transaction or deal.
- Handling the securities or funds of others in connection with securities transactions.

## **Risks Relating to Unregistered Activities**

While the recent allegations are a particularly egregious example that include fraudulent statements hiding transaction-based compensation, the SEC's enforcement action serves as a reminder that flouting broker-dealer registration requirements can result in expensive enforcement actions for both individuals and firms. Regulators and courts will look to the economic reality of the transaction and seek to determine whether there is direct or indirect compensation based on hallmarks of broker-dealer conduct.

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