

The SEC Remains in Search of and Is Looking for Finders

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Much has been written on the topic of finders and arrangers of securities transactions, including when a person or entity acting as a finder (i.e., someone who merely makes an introduction) has crossed the line and engaged in activities or conduct that requires registration as a broker-dealer. Shortly before the end of Jay Clayton's term as Chairman of the Securities and Exchange Commission (SEC), he issued a proposed order providing an exemption from broker-dealer registration requirements for certain "finders" who limit their activities in accordance with the conditions set forth in the proposed order.¹ Ultimately, the proposal was not adopted. Today, finders and unregistered securities transaction activity continue to be on the SEC's radar. The states also closely regulate unregistered securities activities.

Recently, the SEC brought several actions in the federal courts against unregistered finders, confirming that the activity of unregistered persons and entities participating in capital raising remains squarely on the SEC agenda. In *SEC v. Sky Group USA, LLC, et al.*,² the SEC brought suit against Sky Group, a payday loan firm, and four of its employees in the US District Court for the Southern District of Florida, alleging numerous violations of the federal securities laws arising out of a Ponzi scheme in which sales agents sold Sky Group securities to retail investors, collecting millions of dollars in commissions on their sales, even though the sales agents were not registered as broker-dealers. The SEC found indicia of activities requiring registration because, among other actions, the sales agents engaged in the sale of securities in the form of unregistered promissory notes and "earned a commission of one percent of each dollar the investors they recruited invested in the [promissory notes]." Many of the more than 500 alleged victims were low-income members of the South Florida Venezuelan-American community.

The allegations in the complaint are salacious and include charges of fraudulently selling \$25 million of unregistered promissory notes and misappropriating at least \$2.9 million of investor funds for personal use, "several hundred thousand dollars" of which were used to pay for a wedding of one of the defendants at a chateau on the French Riviera. The complaint alleges that additional amounts were used to pay personal credit card debt of one of the principals and diverted to friends and relatives for "no apparent legitimate business purpose." The relief requested in the SEC's complaint includes permanent injunctions, disgorgement plus prejudgment interest, civil penalties and an officer and director bar against one of the defendants. Although it appears that there was a flurry of early motion practice after the complaint was filed, the defendants consented to entry of a final judgment on June 29, 2022, which includes disgorgement, interest and civil penalties totaling \$39,288,990. The other related defendants also consented to entries of final judgement resulting in disgorgement, interest and civil penalties totaling \$8,391,676, and a permanent injunction and officer and director bar against one of the defendants.

¹ Notice of Proposed Exemptive Order Granting Conditional Exemption from the Broker Registration Requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Finders, Exchange Act Release No. 34-90112 (Oct. 7, 2020) (available [here](#)).

² *SEC v. Sky Group USA, LLC, et al.*, SEC Docket No. 21-cv-23443 (Sept. 27, 2021), <https://www.sec.gov/litigation/complaints/2021/comp25234.pdf>.

In *SEC v. Richard Eden, et al.*,³ the SEC brought suit against Richard Eden and an affiliated company in the US District Court for the Central District of California, alleging that Eden violated the federal securities laws by engaging in conduct that requires registration with a qualified broker-dealer. The complaint alleges that Eden is a recidivist and the conduct at issue in the present lawsuit occurred while Eden was subject to a previously imposed associational bar arising from his participation in multiple unregistered securities offerings. According to the complaint, Eden started as an “opener” and eventually morphed into a “finder/closer” role. The SEC alleges that Eden engaged in broker-dealer activity requiring registration because he was “responsible for both identifying potential investors and attempting to secure their investments in the [offering],” and was paid on a success fee basis. The relief requested includes a permanent injunction restraining Eden and his affiliated company from soliciting any person or entity to purchase or sell any security, disgorgement and civil penalties. As of this writing, the defendants have yet to file answers to the complaint.

It is not surprising that the factual allegations in these cases would attract regulatory attention. The fact that the SEC remains vigilant in its monitoring of firms and individuals engaged in capital raising requires firms and agents to learn the rules and stay within the permissible boundaries. In addition, they must be mindful of the less-than-crystal clear regulatory guidance on unregistered finders, and more specifically, at what point is a person or entity “engaged in the business of effecting transactions in securities for the account of others.” Persons in this business must understand that no-action letters in this subject area are fact-specific and often tailored to narrow and unique fact patterns. Finders in violation of broker-dealer registration requirements may be subject to severe penalties under federal securities laws. Courts and the SEC have looked to certain factors when determining whether a finder has violated the federal securities laws by failing to register as a broker-dealer. Each determination is very fact-specific, but in general, the SEC will consider:

- Does the person’s compensation depend on the outcome or size of the transaction (i.e., transaction-based compensation)?
- Does the person participate in important parts of a securities transaction, including solicitation, negotiation or execution of the transaction or assistance in structuring payments?
- Does the person actively engage in the marketing of the securities?
- Does the person give advice on the investment’s structure or suitability?

³ *SEC v. Richard Eden, et al.*, SEC Docket No. 22-cv-04833 (July 14, 2022), <https://www.sec.gov/litigation/complaints/2022/comp25444.pdf>.

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