BUSINESS LAW SECTION
CORPORATIONS COMMITTEE
THE STATE BAR OF CALIFORNIA
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PROPOSAL TO ENACT A SAFE HARBOR FOR "FINDERS" IN CONNECTION WITH SECURITIES TRANSACTIONS

LEGISLATIVE PROPOSAL (BLS–2013-03)

TO: Office of Governmental Affairs

FROM: Emily Yukich, Co-Chair, and Jeff Drake, Co-Chair, Corporations Committee (the "Committee"), Business Law Section (the "Section")

DATE: May 1, 2012

RE: Proposal to enact a safe harbor for "finders" in connection with securities transactions

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SECTION ACTION AND CONTACTS

Date of Approval by Section Executive Committee (the "Executive Committee"): June 1, 2012
Approval Vote: For: 14 Against: 0

Executive Committee Contact:	**Committee Contact:**
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History, Digest and Purpose

The mission statement of the Committee provides that it shall study, consider, and take a position on and advocate that position with respect to, among other things, "[n]eeded changes to the California Corporations Code" and "[o]ther statutory changes that would promote efficiency or effectiveness in practice if made." The Committee has concluded that it is consistent with this mission to propose amending portions of Section 25004(a) of the Corporate Securities law of 1968, as amended (the "Code") concerning the definition of a broker-dealer. The proposed amendment, if enacted, would promote efficiency and effectiveness in practice by establishing requirements based upon the current legal framework for persons acting as "finders" in connection with securities transactions who intend to fall outside of the definition of broker-dealer.

Background.

California regulates broker-dealers under section 25210 of the Code. Section 25210 provides that it is unlawful for a broker-dealer to conduct business in California without first applying for and securing a certificate from the California Department of Corporations (the "Department")[1] unless an exemption applies. Section 25004(a) defines a "broker-dealer" as any person engaged in the business of effecting transactions in securities in California for the account of others or for its own account, but does not include certain persons excluded by statute. Persons engaged in unlicensed broker-dealer activities can be subject to administrative, civil, and criminal sanctions. Furthermore, Section 25501.5 imposes liability for rescission and money damages in connection with the purchase or sale of a security if a non-exempt, unlicensed broker-dealer participated in the securities transaction. This liability is likely to lead to severe consequences for both the issuer and the unlicensed broker-dealer.

It is widely recognized among business participants that many individuals and entities act as "finders" in the State of California in connection with securities transactions even though they are not registered with the State as a "broker-dealer" or an "associated person thereof." Both California and federal law recognize that a finder's activity may be lawful or unlawful depending upon a finder's degree of involvement, including the finder's compensation therefor, in a securities transaction.

The term "finder" is generally understood under California law to mean a person who merely introduces parties to each other, without negotiating on behalf of either party and without providing any information on which either party may rely upon in negotiations.[2] Judicial decisions and interpretive opinions issued by the Department have narrowly construed the scope

[1] All references to the Department of Corporations are accurate as of the date of this legislative proposal and should be deemed revised as the context requires upon implementation of the Governor of California's Reorganization Plan for 2012.

[2] Dep't of Corporations, Invitation for Comments on Administrative Regulation under the Corporate Securities Law, No. PRO 31/06 (Sept. 13, 2006); *see also* Commissioner's Opinion No. 81/1C (Jan. 19, 1981)

of permissible activities that a finder may engage before crossing over the line into illegal broker-dealer activity.[3]

Finders are often engaged by smaller business entities and individuals seeking to raise capital from investors via securities transactions notwithstanding the severe consequences of engaging a finder who could be viewed as having engaged in illegal broker-dealer conduct. The practical reason underlying this risky activity is that finders can provide a "survival" benefit for entrepreneurial-minded start-up companies and other small to mid-sized business entities that would otherwise be unable to engage a broker-dealer.

Several governmental and law organizations have studied, analyzed and interpreted the impact (both positive and negative) of the use of finders' in the capital formation process. To date, however, no regulatory regime has been implemented that provides the public with clarity regarding the lawful employment of finders.

The Securities and Exchange Commission ("SEC") studied the issue during its Government Business-Forum on Small Business Capital Formation in September 20, 2004, which is described in the related white paper published by Warner Norcross & Judd, LLP (the "SEC 2004 Forum Whitepaper").[4] The SEC 2004 Forum Whitepaper acknowledged that, "the vast majority of finders are unregistered broker-dealers under federal and state securities laws, and accordingly transactions in which they are involved jeopardize the issuer, its officers and directors, and other investors because of the use of the unregistered/non-exempt person."

The SEC also published "The Final Report of the 22nd Annual SEC Government-Business Forum on Small Business Capital Formation (December 2003)," which recognized the need for a new approach to regulating finders and it provided some recommendations.[5] Among the recommendations, the SEC determined that it should work with NASAA and FINRA (formerly the NASD) to (a) address the regulatory status of finders; (b) facilitate an appropriate role for finders in the capital-raising process; and (c) clarify the circumstances under which issuers and others can legally compensate finders and other capital formation specialists who meet minimum standards.

In *People v. Cole* (2007) 156 Cal.App.4th 452, a California Court of Appeal examined broker-dealer licensure requirements for directors and officers of an issuer. This case incited confusion as to whether an officer or director of a company who engages in a transaction for the sale of securities on behalf of its employer corporation may be in violation of the broker-dealer registration rules. The Department recently published a release on this matter (the "2011 Release") in hopes of providing clarity.[6] In the 2011 Release, the Department concluded that,

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[3] *See, e.g.*, Commissioner's Opinion No. 78/22C (Dec. 13, 1978); Interpretive Opinion No. PL/180C (Aug. 19, 1971); Commissioner's Opinion No. 73/67C (May 21, 1973).

[4] http://www.sec.gov/info/smallbus/hmakens.pdf

[5] http://www.sec.gov/info/smallbus/hmakens.pdf

[6] Release No. 119-C (Revised), dated November 28, 2011, viewed at http://www.corp.ca.gov/Commissioner/Releases/pdf/119C.pdf

"the decision of Cole has limited impact and should not be read to stand for the proposition that officers and directors of issuers must be licensed as broker-dealers or broker-dealer agents unless they receive a commission for the sale of securities."[7] The Department noted that an exception to the definition of broker-dealer exists for "agents" who are employees of broker-dealers and issuers. Furthermore, the Department stated that:

> "[Code] subsection 25003(a) defines an agent, in relevant part, as any individual, other than a broker-dealer or a partner of a licensed broker-dealer, who represents a broker-dealer or who for compensation represents an issuer, in effecting or attempting to effect purchases or sales of securities in this state. With regard to officers and directors of an issuer, the 'agent exclusion' is qualified by a requirement that directors and officers cannot receive compensation specifically related to purchases or sales of securities."

On September 13, 2006 (preceding the 2011 Release), the Department published an "Invitation for Comments on Administrative Regulation Under the Corporate Securities Laws" seeking comments from interested persons to address whether the Department should adopt an exemption and/or limited registration system for finders and private placement broker-dealers (the "Invitation for Comment").[8]

The Invitation for Comment cited to a May 2005 report on private placement broker-dealers prepared and published by a task force created by the American Bar Association Section of Business Law (the "ABA Report").[9] The Invitation for Comment highlighted the ABA Report's observation that private placement broker-dealers were critical to the success of smaller and emerging companies obtaining early stage financing, particularly for raising capital in an amount less than $5 million. Further, the ABA Report asserted that a number of legal, regulatory, and economic factors had contributed to creating a very constricted market for obtaining equity financing by smaller issuers. The ABA Report also raised concerns with persons involved in the negotiation and consummation of mergers and acquisition transactions and whether such activities are subject to broker-dealer licensure.

The Invitation for Comment also noted that, in April 2006, the Advisory Committee on Smaller Public Companies issued its final report to the SEC. One of the primary recommendations in the report was for the SEC to spearhead a streamlined registration process for private-placement broker-dealers. The report noted that "virtually all of the services" provided by private placement broker-dealers in support of capital formation activities amount to unregistered broker-dealer activity.

The Commissioner opined that it has "concerns that the current approach with respect to finders and private placement broker-dealers may unduly impede capital formation and jobs

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[7] *Id.*

[8] *Supra, note 1*.

[9] Task Force on Private Placement Broker-Dealers, ABA Section of Business Law, "Report and Recommendations of the Task Force on Private Placement Broker-Dealers," 60 Business Lawyer 959 (May 2005).

creation in California. In addition, the Commissioner stated that, "difficulties in attracting capital may adversely impact small and emerging companies, which have historically been the catalysts for California's leading position in technology, biological science, entertainment and other industries. The Commissioner also stated its desire to improve market transparency and to restrict the ability of those persons with disciplinary records to operate as private placement broker-dealers."

In the Invitation for Comment, the Department specifically stated:

> "One key issue is whether a finder is 'engaged in the business of effecting transactions in securities.' Persons who engage in activities that go beyond the limited scope permitted for finders are required to be licensed by the Department as a broker-dealer unless otherwise exempt. Under the current regulation scheme in California, the Department makes no distinction in licensing and examination between a traditional, full service broker-dealer and those persons who might engage in comparatively more limited activities of a private placement broker-dealer."

The potential for intermingling federal regulatory requirements also should not be overlooked. Unless the business of a broker-dealer is exclusively within California and not conducted through a national securities exchange, then both state and federal law will apply to such activity. Federal law makes it unlawful for any individual or entity "to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security . . . unless such person is registered" with the SEC as a broker or dealer. See, e.g., Exchange Act of 1934 ("Exchange Act") § 15(a). In the SEC's Denial of No-Action Request Letter from Brumberg, Mackey & Wall, P.L.C., dated May 17, 2010, the staff of the Division of Trading Markets of the SEC (the "Staff") stated that, "[a] person's receipt of transaction-based compensation in connection with these activities is a hallmark of broker-dealer activity"; and the Staff concluded that the introduction to an issuer of "only those persons with a potential interest in investing . . . implies . . . both 'pre-screening' potential investors to determine their eligibility to purchase the securities, and 'pre-selling' . . . to gauge the investors' interest."

Amidst all of this confusion concerning the regulation of finders, the SEC 2004 Forum Whitepaper succinctly summarized the reasons why finders are needed for the ecosystem of financial sustainability of certain companies as follows:

> "A variety of factors drive the need for action. The broker-dealer universe for equity financing has been dramatically shrinking both in terms of the number of firms and the scope of services that they render. With bank acquisitions, consolidations of regional firms, and loss of firms in the current economic downturn, the scarcity of investment banking services, particularly for mid to small size issuers, has dramatically worsened. Many smaller brokerage firms are focusing on mutual funds and variable products, especially after the economic bath that many took if they promoted technology, communications and .com stocks. The self-imposed thresholds for doing private deals are rising for economic reasons. The result is that too few brokerage firms are willing to do

> offerings, public or private, under $25 million. There are several rationales for this position. The risk of doing a small deal is often similar to a large one. The legal costs are often comparable to a larger transaction because of the lack of sophistication and systems of smaller issuers. The issuer's financial and other information may not be as complete or accurate. Smaller issuers often lack the expertise and experience to adequately deal with 1934 Act financial and other reporting issues. Finally, the smaller the company, the less diversification it can provide to an investor in terms of product range and depth of personnel and markets. Venture capital is not able to fill this void. Venture firms are trending to investment in profitable businesses and there has been a drop in available funds. They are looking more at mezzanine financing, and less in pure equity investment. Many venture capitalists got burned in tech and related stocks and their investors are more risk-adverse. Two years ago, some venture capital funds were returning their investors' monies due to inability to find enough satisfactory investments under their criteria. Further, the high yield requirements for venture capitalists are frequently incompatible with the growth potential of the preponderance of smaller issuers. Smaller issuers often lack the expertise and experience to adequately deal with 1934 Act reporting issues, and that was the case before the complexities introduced by Sarbanes Oxley. Finally, there are too few venture capital funds to have even a remotely significant impact on fulfilling the need for funds. The traditional financing sources for smaller issuers remain limited. Most issuers engage in "cup of gas" financing, seeking enough funds to move their project down the road, but not getting the funds to really develop their business. These issuers run through the chain of friends and family, to customers, to suppliers, to extended contacts, and then often run out of alternatives for growth."

As a result, the Committee hereby proposes an amendment to Code section 25004(a), which seeks to provide a clear framework within which issuers and finders may lawfully conduct business, while simultaneously regulating finders with a view towards investor protection.

Proposal.

The Committee proposes that Code section 25004(a) (i.e., the definition of "broker-dealer") be amended as set forth below under the section entitled "Text of Proposal" (the "**Proposal**"). The Proposal would create a safe harbor, which would exempt from the definition of a broker-dealer persons acting in compliance with the Proposal's requirements, thereby exempting such persons from the certification and other requirements of Code section 25210. The Proposal requires that persons seeking to rely on the safe harbor shall (i) have filed an initial statement of information and related filing fee as set by the Department of Corporations, (ii) file a notice with the Department for each securities transaction and pay a related notice filing fee as set from time to time by the Department of Corporations, (iii) file an annual statement of information renewal and a related filing fee as set from time to time by the Department of Corporations, (iv) obtain the informed written consent of each investor, and (v) maintain certain records. In addition, the Proposal prohibits certain actions, such as taking custody of client

funds, conducting due diligence, and making disclosures to investors other than permitted disclosures. Failure to comply with any of the requirements under the safe-harbor would prevent the finder from relying on the exemption and, therefore, the finder analysis would default to the current legal regime.

Reasons for the Proposal.

Finders should be recognized for the beneficial services they provide in assisting small to mid-sized businesses, which would otherwise be unable to obtain sufficient capital to operate. The SEC 2004 Forum Whitepaper emphasized this point by stating "[t]here are significant positive aspects to the use of competent finders. They can provide the right candidate for a merger or acquisition; they can find an angel for an emerging company; they can locate mezzanine financing; and they can open doors to venture capitalists and other financial resources otherwise not available to an entity seeking capital. They may bring strong committed investors to an emerging company." Three states (Texas, Michigan, and Minnesota) have already recognized such benefits and enacted safe-harbors or implemented limited registration regimes for finders.

A determination that a finder has engaged in unlicensed broker-dealer with State of California can be the basis for subjecting an issuer (including its directors and officers) and the unlicensed person to substantial liability, as California law provides investors with the right of rescission and an extended statute of limitations arising from unlicensed broker-dealer activity. Whether a person is acting as a broker-dealer or finder is a fact-specific inquiry, and the Proposal will promote market transparency among issuers, finders and investors.

For the reasons set forth herein, the Committee believes that the enactment of the Proposal adds a modicum of certainty in connection with the engagement of finders in securities transactions. This added certainty will benefit (a) the State of California via increased income tax revenues, (b) startup companies, and small to midsized business entities seeking access to the capital markets, and (c) individuals who have the capability to earn income by making introductions between securities issuers and investors.

The Proposal is not intended to displace the current law that governs finders; rather it is intended only to provide a narrow exception to the definition of "broker-dealer" for those finders who comply with the Proposal's procedures. The Proposal is not a new concept. As discussed above under the section entitled, "Background," governments, government agencies and legal organizations have, for many years, studied the benefits and detriments relating to the use of finders in securities transactions.

The Proposal has been designed to foster confidence among securities issuers seeking to raise capital by engaging finders for compensation who are capable of making introductions to the issuer. At the same time, the Proposal ensures that investor protections are not eroded, and that the State of California has the means to monitor finders' business activities.

In order to qualify for the safe harbor, finders will be required to sign and file a form with the Department, substantially in the form set forth as Exhibit "A" hereto. This form includes

affirmative representations that the finder will not attempt to induce a securities transaction or otherwise participate in the securities transaction beyond making the mere introduction between the issuer and the potential investor(s). In addition, the filing requirement will assist the Department of Corporations with acting in the public interest and protecting investors in the State of California because the Proposal will incentivize current finders to identify themselves rather than remain in the shadows of the financial industry. Further, the burden of record retention has been placed on the finders rather than the Department of Corporations, and in doing so, finders will lose the benefit of the Proposal if they are unable to timely produce such documentation upon request of the Department of Corporations or upon criminal or civil action or similar proceeding.

As mentioned above, the SEC views compensation of a finder based upon a percentage of the amount invested to be a strong factor in favor of finding that the finder acted as a broker-dealer. Nevertheless, percentage-based compensation is often the only type of compensation that an issuer can afford to pay to a finder. Therefore, the Proposal permits this type of compensation arrangement so long as all of the conditions of the safe harbor are satisfied.

While the percentage-based arrangement may provide an incentive for the finder to do more than merely introduce the parties, any detriment arising from such incentive is removed by the affirmative representation that the finder is only making an introduction and the requirement for a signed, written informed consent of the compensation arrangement. This means that finders will be incentivized to do nothing other than introduce the parties for fear that the finder would lose the benefit of the Proposal and be potentially liable for securities fraud in connection with making a false representation on the informed consent letter and form filed with the State.

Allowing percentage-based compensation also is expected to help the State generate increased tax revenues because issuers are likely to engage more finders based upon the certainty provided by the Proposal.

In conclusion, the Proposal will have minimum impact, if any, on current government resources while simultaneously providing a mechanism to foster capital formation for business entities, protection for investors, and jobs creation for individuals in California.

Application

If enacted, the Proposal would become effective on January 1, 2014.

Pending Litigation

As of the date submitted, the Committee is unaware of any pending litigation that is relevant to this legislative proposal.

Likely Support and Opposition

The Committee anticipates that the Proposal would receive support from California business entities, individuals, and corporate law practitioners, with particularly strong support

from startup companies and small to midsize business entities. Despite effective investor protection mechanisms that currently exist, opposition from investor rights advocates is possible. In addition, broker-dealers may oppose the Proposal based on an argument that their business will suffer if others are able to compete with them and without having to endure the costs associated with the current licensing and regulation of broker-dealers. However, the Proposal restricts a finders activities to making introductions and, therefore, broker-dealers' concerns about competition have been mostly eliminated.

Fiscal Impact

No negative fiscal impact is expected. The Proposal may make California a more attractive location for companies to conduct business, which would increase tax revenues and create jobs. The Proposal would create new filing requirements, which would result in some additional cost to the Department of Corporations. However, any such cost could be offset by the filing fee contemplated under the Proposal.

Germaneness

The subject matter of the Proposal is one in which the members of the Section (and, in particular, the members of the Committee) have special expertise because they are called upon to interpret provisions of the Code and provide guidance on California corporate and securities law matters. The subject matter requires the special knowledge, training, experience and technical expertise of the Section.

Disclaimer

This position is only that of the Corporations Committee of the Business Law Section of the State Bar of California. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Corporations Committee and in the Business Law Section is voluntary and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.

Text of Proposal

SECTION 1. Section 25004 of the Corporations Code is amended to read:

25004. (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. "Broker-dealer" also includes a person engaged in the regular business of issuing or guaranteeing options with regard to securities not of his own issue. "Broker-dealer" does not include any of the following:

(1) Any other issuer.

(2) An agent, when an employee of a broker-dealer or issuer.

(3) A bank, trust company, or savings and loan association.

(4) Any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

(5) A person who has no place of business in this state if he effects transactions in this state exclusively with (A) the issuers of the securities involved in the transactions or (B) other broker-dealers.

(6) A broker licensed by the Real Estate Commissioner of this state when engaged in transactions in securities exempted by subdivision (f) or (p) of Section 25100 or in securities the issuance of which is subject to authorization by the Real Estate Commissioner of this state or in transactions exempted by subdivision (e) of Section 25102.

(7) An exchange certified by the Commissioner of Corporations pursuant to this section when it is issuing or guaranteeing options. The commissioner may by order certify an exchange under this section upon such conditions as he by rule or order deems appropriate, and upon notice and opportunity to be heard he may suspend or revoke such certification, if he finds such certification, suspension, or revocation to be in the public interest and necessary and appropriate for the protection of investors.

(8) An individual who acts only as a finder and satisfies all of the conditions set forth in this subsection (8). For purposes of this section, a "finder" shall mean a person who introduces or refers one or more accredited investors to an issuer or an issuer to one or more accredited investors solely for the purpose of a potential investment in the securities of the issuer, and does not (a) participate in negotiating any of the terms of any such investment, (b) advise any party to the securities transaction regarding the merits of, or the advantages or disadvantages of entering into such investment, or (c) sell or intend to sell any securities of the issuer which securities are owned, directly or indirectly, by the finder as a part of any such investment.

(i) The finder has filed an initial statement of information with the Department of Corporations, in such form as the Commissioner may prescribe by regulation, and has paid an initial filing fee.

(ii) The finder has timely filed any annual reports of activity with the Department of Corporations, in such form as the Commissioner may prescribe by regulation, and has paid the requisite filing fee.

(iii) For each transaction or series of transactions, the finder has filed a notice with the Department of Corporations, to be made available to the public, in such form as the Commissioner may prescribe by regulation, containing affirmative representations by the finder that the finder (A) is acting only to introduce the parties and will not effect any transaction in,

advise or consult on, or induce or attempt to induce the purchase or sale of, any security in this state, (B) has not done any of the acts, satisfied any of the circumstances, or is subject to any order specified in section 25212, subdivisions (a) through (i) of the Corporate Securities Law of 1968 (C) has not engaged in any advertising or general solicitation with respect to the offering, sale, or purchase of any securities, (D) will not receive, directly or indirectly, possession or custody of any funds in connection with acting as a finder, (E) has not acted in violation of any of the provisions of this section, and (F) has fully disclosed and obtained the informed written consent of the issuer and the potential investor regarding the material terms of the compensation arrangement between the issuer and the finder relating to the finder's introduction of such investor. A separate notice must be filed for each new offering of securities no later than 30 calendar days following the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date becomes the next business day. For each notice filing, the finder shall pay a filing fee as set from time to time by the Department of Corporations.

(iv) Concurrently with each introduction, the finder obtains the informed, written consent of each person or entity introduced by the finder to an issuer, in an agreement signed by the finder, the issuer, and the investor, disclosing the following: (A) the type and amount of compensation that will be paid to the finder in connection with the investment and the conditions for payment of such compensation; (B) that the finder will neither recommend nor advise the investor with respect to the subject securities transaction; (C) whether the finder is also an owner of the securities offered by the issuer, and (D) any other actual and potential conflicts of interest in connection with the finder's activities. Each investor shall represent in such written consent that the investor is an accredited investor, as that term is defined in Regulation D under the Securities Exchange Act of 1933, as amended, and that the investor knowingly consents to the payment of the compensation described therein.

(v) The finder shall maintain and preserve, for a period of five (5) years from the date of filing of the notice prescribed in subsection (8)(i), a copy of the notice, the written consent required in subsection (8)(ii), and such other records relating to any investments in connection with which the finder receives compensation as the Commission may by rule require. The finder shall, upon written request of the Commissioner of Corporations, furnish to the Commissioner of Corporations any records required to be maintained and preserved under this subsection.

(vi) The finder does not engage in any of the following: (A) directly or indirectly take possession or custody of investor funds, (B) knowingly participate in any unregistered offering not otherwise exempt from registration or qualification, (C) fail to disclose the existence of a financial or pecuniary benefit to the finder in connection with or relating to the finders' introduction, (D) conduct due diligence on behalf of issuer or investor, (E) solicit, market, advertise or hold himself, herself or itself out to the public in general as being in the business of making introductions between accredited investors or issuers or seeking business from accredited investors or issuers, (F) or make any disclosures to investors other than disclosures expressly permitted under this subsection. Permitted disclosures are limited to the name, address and telephone number of the issuer; the name, type, and price (if known) of any securities to be issued; the issuer's industry, location, and years in business; the type, number, and aggregate amount of securities being offered; and contact information regarding the investor.

(vii) a person who does not comply with each of the provisions of this subsection 8 shall not be entitled to rely on the exemption afforded hereunder.

(b) For purposes of this section, an agent is an employee of a broker-dealer under paragraph (2) of subdivision (a) when the agent is employed by or associated with the broker-dealer under all of the following conditions:

(1) The agent is subject to the supervision and control of the broker-dealer.

(2) The agent performs under the name, authority, and marketing policies of the broker-dealer.

(3) The agent discloses to investors the identity of the broker-dealer.

(4) The agent is reported pursuant to subdivision (c) of Section 25210 and the rules adopted thereunder.

EXHIBIT "A" [PROPOSED FORM OF TRANSACTION NOTICE FILING]

COMMISSIONER OF CORPORATIONS
STATE OF CALIFORNIA
NOTICE OF TRANSACTION PURSUANT TO CORPORATIONS CODE SECTION 25004(a)(8)(iii)

1. Name of Finder: _____

2. Address of Finder: _____

3. Area Code and Telephone Number: _____

4. Name of Issuer: _____

5. Address of Issuer: _____

6. Issuer's state (or other jurisdiction) of incorporation or organization: _____

By filing this notice with the Department of Corporations, the Finder hereby represents and warrants that it:

A. is acting only to introduce the parties and will not effect any transaction in, advise or consult on, or induce or attempt to induce the purchase or sale of, any security in this state;
B. has not done any of the acts, satisfied any of the circumstances, or is subject to any order specified in section 25212, subdivisions (a) through (i) of the Corporate Securities Law of 1968;
C. has not engaged in any advertising or general solicitation with respect to the offering, sale, or purchase of any securities;
D. will not receive, directly or indirectly, possession or custody of any funds in connection with acting as a finder;
E. has not acted in violation of any of the provisions of Corporations Code 25004(a)(8); and
F. has fully disclosed and obtained the informed written consent of the Issuer and the potential investor regarding the material terms of the compensation arrangement between the Issuer and the finder relating to the finder's introduction of such investor.

Date: _____

_____
Finder

( ) Check if Finder already has a consent to service of process on file with the Commissioner

_____
Authorized signature on behalf of Finder

_____
Print name and title of signatory

Name, address, and phone number of contact person:
_____

Instruction: Each Finder (other than a California Corporation) filing a notice under Section 25004(a)(8) must file a Consent to Service of Process (Form 260.165), unless it already has a consent to service on file with the Commissioner.