

CLIENT ALERT

SEC Allows Personal Services Entities to Receive Transaction-Based Compensation Without Registering as Broker-Dealers

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On November 17, 2025, the Staff of the SEC's Division of Trading and Markets issued no-action relief clarifying that a personal services entity ("PSE") that is owned by registered representatives ("RRs") of a broker-dealer can receive transaction-based compensation without registering as a broker-dealer under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), subject to certain conditions described below.¹

The question of whether the payment of transaction-based compensation to a PSE would cause the PSE to be deemed a broker-dealer required to register has long been subject to inconsistent treatment by the SEC Staff. Section 3(a)(4) of the Exchange Act defines broker to mean "any person engaged in the business of effecting transactions in securities for the account of others." Historically, the Staff viewed the receipt of transaction-based compensation in connection with effecting securities transactions for the account of others to be a hallmark of brokerage activity. In light of this view, the Staff consistently declined requests for no-action relief to allow payment

¹ Financial Services Institute, SEC Staff No-Action Letter (Nov. 17, 2025), available [here](#).

of commissions to PSEs.² More recently, however, the courts and the SEC have recognized that the receipt of transaction-based compensation is not itself determinative of broker status.³

The Staff's no-action letter reverses course and would allow a registered representative's transaction-based compensation to be paid to the registered representative's PSE without the PSE registering as a broker-dealer under Section 15(b) of the Exchange Act if certain conditions are satisfied. In granting the no-action relief, the Staff noted assurances that the registered broker-dealer that pays the PSE would remain responsible for supervising the RRs, including by determining and directing the compensation to be paid to them, and that the PSE would not be engaged in soliciting, executing, or negotiating securities transactions, or engaging in any other activities that would reasonably cause the PSE to meet the definition of "broker" or "dealer" under Section 3(a)(4)(A) or 3(a)(5)(A) of the Exchange Act, respectively. The letter requesting no-action relief identified seven conditions designed to provide the Staff with those assurances:

- (1) The broker-dealer will maintain a bank account for paying transaction-based compensation to its independent contractor RRs who are also employees or independent contractors of the PSE and associated with the broker-dealer.
- (2) The broker-dealer will instruct (or otherwise approve) the PSE regarding the size and timing of transaction-based compensation to be paid to the RRs. Such instruction (or approval) will be specific to the payment to be made to each RR. Registered principals who are also employees or independent contractors of the PSE may make recommendations to the broker-dealer regarding the size and timing of transaction-based compensation to be paid to the RRs. However, the broker-dealer will have final discretion regarding the size and timing of the payment to each of the RRs.
- (3) Upon receiving instructions (or approval) from the broker-dealer, the PSE will promptly distribute transaction-based compensation to the RRs, provided that the PSE may retain a portion of such payments for its use in paying overhead and administrative expenses.
- (4) As required by Rules 17a-3 and 17a-4 of the Exchange Act, the broker-dealer will maintain records regarding all compensation payments it makes to the PSE and which will provide required details as to payments made to each RR.
- (5) Each of the RRs and registered principals of the PSE will be registered with the same broker-dealer.

² See, e.g., Wolff Juall Investments, LLC, SEC Staff Denial of No-Action Request (May 17, 2005).

³ See *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1341 (M.D. Fla. 2011); 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, Securities Exchange Act Release No. 90112, 85 Fed. Reg. 64542, 64545 (Oct. 13, 2020) ("Although it is not required to establish broker status and is not in itself determinative of broker status, the receipt of transaction-based compensation in connection with securities activities, such as solicitation of potential investors, has been considered by courts as a factor indicating that registration as a broker may be required.").

- (6) Each owner of the PSE will be a registered person of the broker-dealer.
- (7) The PSE's location will either be designated as a branch office or as an Office of Supervisory Jurisdiction of the broker-dealer.

The broker-dealer would also be required to maintain policies and procedures designed to ensure that the conditions of the no-action relief are satisfied.

To avoid any doubt about delineation of the broker-dealer's and PSE's obligations, responsibilities, and limitations, the broker-dealer and PSE would enter into a written independent contractor servicing agreement, which would include 10 requirements:

- (1) The broker-dealer will be obligated to comply with all applicable federal, state and local regulations, registration, and licensing requirements.
- (2) The broker-dealer will have sole and exclusive control over the day-to-day securities related activities of all of its associated persons.
- (3) The broker-dealer will be solely responsible for hiring, proper registration, licensing, training, and supervision of all of its RRs with respect to the broker-dealer's obligations under all applicable securities laws, rules, and regulations.
- (4) The broker-dealer will retain the exclusive right to discipline and terminate its associated persons.
- (5) All books and records in the possession of the PSE that are maintained on behalf of the broker-dealer will be made available for inspection by the SEC, any self-regulatory organization ("SRO"), or any other regulatory authority with jurisdiction over the broker-dealer's business.
- (6) The broker-dealer will not assert that the existence of any agreement with the PSE in any way affects the ability of the SEC, any SRO, or any other relevant regulatory authority to regulate, examine, or discipline the broker-dealer or any of its associated persons for violations of applicable securities laws.
- (7) The PSE will not itself engage in any securities-related activities that would require it to register as a broker-dealer.
- (8) The PSE will not hold itself out as a broker-dealer.
- (9) To the extent the PSE employs any person who is not registered, such personnel will not be permitted to engage in any securities-related activities that would require them to become RRs of a broker-dealer and will only have clerical or ministerial involvement in securities transactions.

- (10) The PSE will not pay any bonuses to unregistered personnel which are tied to transaction-based compensation paid by the broker-dealer to the PSE.

Key Takeaways

The Staff's no-action relief is a welcome, common sense development that will help independent contractor RRs recognize tax, estate planning, and other benefits that can be achieved by forming a limited liability company or other business entity to receive compensation for services rendered. For example, independent contractor RRs might realize tax savings related to portions retained by the PSE to pay overhead and administrative expenses. The Staff's long-standing view regarding PSEs raised questions about whether PSEs established by independent contractor RRs might be deemed broker-dealers if transaction-based compensation owed to the RRs were paid through the PSE. Questions also existed as to whether this arrangement might cause the broker-dealer paying the transaction-based compensation to violate FINRA Rule 2040, which prohibits FINRA members from paying transaction-based compensation to a person if the receipt of the payment would cause the person to be required to register as a broker-dealer. With the no-action relief, independent contractor RRs should feel more comfortable establishing PSEs, and broker-dealers should similarly have greater comfort paying amounts to PSEs, under the conditions described above. It is not clear, however, whether the Staff might view there as being limitations on the types or amounts of overhead and administrative expenses that can be retained by the PSE.

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