

# Securities Lawyer's Deskbook



Law

*published by The University of Cincinnati College of*

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## General Rules and Regulations promulgated under the Securities Exchange Act of 1934

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## Rule 3a4-1 -- Associated Persons of an Issuer Deemed not to be Brokers

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- a. An associated person of an issuer of securities shall not be deemed to be a broker solely by reason of his participation in the sale of the securities of such issuer if the associated person:
  1. Is not subject to a statutory disqualification, as that term is defined in [section 3\(a\)\(39\)](#) of the Act, at the time of his participation; and
  2. Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities; and
  3. Is not at the time of his participation an associated person of a broker or dealer; and
  4. Meets the conditions of any one of paragraph (a)4(i), (ii), or (iii) of this section.
    - i. The associated person restricts his participation to transactions involving offers and sales of securities:
      - A. To a registered broker or dealer; a registered investment company (or registered separate account); an insurance company; a bank; a savings and loan association; a trust company or similar institution supervised by a state or federal banking authority; or a trust for which a bank, a savings and loan association, a trust company, or a registered investment adviser either is the trustee or is authorized in writing to make investment decisions; or

- B. That are exempted by reason of section 3(a)(7), 3(a)(9) or 3(a)(10) of the Securities Act of 1933 from the registration provisions of that Act; or
  - C. That are made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer; or
  - D. That are made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer;
- ii. The associated person meets all of the following conditions:
- A. The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities; and
  - B. The associated person was not a broker or dealer, or an associated person of a broker or dealer, within the preceding 12 months; and
  - C. The associated person does not participate in selling an offering of securities for any issuer more than once every 12 months other than in reliance on paragraph (a)4(i) or (a)4(iii) of this section, except that for securities issued pursuant to rule 415 under the Securities Act of 1933, the 12 months shall begin with the last sale of any security included within one rule 415 registration.
- iii. The associated person restricts his participation to any one or more of the following activities:
- A. Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; *Provided, however,* that the content of such communication is approved by a partner, officer or director of the issuer;
  - B. Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; *Provided, however,* That the content of such responses are limited to information contained in a registration statement filed under the Securities Act of 1933 or other offering document; or
  - C. Performing ministerial and clerical work involved in effecting any transaction.
- b. No presumption shall arise that an associated person of an issuer has violated section 15(a) of the Act solely by reason of his participation in the sale of securities of the issuer if he does

not meet the conditions specified in paragraph (a) of this section.

c. **Definitions.** When used in this section:

1. The term ***associated person of an issuer*** means any natural person who is a partner, officer, director, or employee of:
    - i. The issuer;
    - ii. A corporate general partner of a limited partnership that is the issuer;
    - iii. A company or partnership that controls, is controlled by, or is under common control with, the issuer; or
    - iv. An investment adviser registered under the Investment Advisers Act of 1940 to an investment company registered under the Investment Company Act of 1940 which is the issuer.
  
  2. The term ***associated person of a broker or dealer*** means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any State to register as a broker or dealer in that State solely because such person is an issuer of securities or associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this section.
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## Regulatory History

50 FR 27946, July 9, 1985

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