



## Are Issuers Of Options Broker-Dealers?

By [Keith Paul Bishop](#) on September 9, 2011

In the last two posts, I've been discussing standardized options trading. Today, I address the question of whether persons engaged in the regular business of issuing options may fall within the definition of a "broker-dealer" for purposes of the Corporate Securities Law of 1968. The short answer is that they can.

In [Standardized Options – Who's Your Daddy?](#), I noted that the SEC has taken the position that [The Options Clearing Corporation](#) is the issuer of standardized options even though it is not the issuer of the underlying security. California Corporations Code Section 25004(a) defines "broker-dealer" to include a person engaged in the regular business of issuing or guaranteeing options with regard to securities not of its own issue. The legislature added this language in 1974, Stats. 1974, ch. 1103 § 2.

Subdivision (a)(7) of Section 25004, however, excludes from the definition of "broker-dealer" an exchange certified by the Commissioner when it is issuing or guaranteeing options. In [Release No. 47-C](#), the Commissioner certified the following exchanges:

- The [Chicago Board Options Exchange, Incorporated](#) and the OCC;
- The American Stock Exchange, Inc. (nka "NYSE AMEX LLC") and the OCC; and
- The Pacific Stock Exchange (nka "NYSE Arca") and the OCC.

Obviously, this release has not been updated to reflect the current names of the American and Pacific stock exchanges. Also, several other exchanges on which options trading occurs are absent from the list.

It is also interesting to note that Section 25004 excludes exchanges. The OCC is not an exchange. It is a registered clearing agency.

Technically, there are two types of clearing agencies. Most securities lawyers are familiar with clearing agencies that act as depositories (*i.e.*, someone who holds stock and other securities certificates in bulk form for its participants and maintains ownership records of the securities on its own books). [The Depository Trust Company](#) is the primary U.S. depository for securities. The other

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type of clearing agency is a clearing corporation such as the OCC. Among other things, a clearing corporation acts as an intermediary in settling member transactions. The [National Securities Clearing Corporation](#) and the [Fixed Income Clearing Corporation](#) are other examples of clearing corporations. Both are subsidiaries of The Depository Trust & Clearing Corporation.

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