

"Can I use finders to raise the money?"

Anyone faced with the challenge of funding a project from non-bank sources will ask this question sooner or later.

The law governing finders depends on whether you are engaging in a securities or non-securities transaction and, if it is a securities transaction, what type. You cannot know what rules obtain with respect to finders until you know the type of investor offering you are proposing.

If you are trying to raise money from a few active investors authorized to help make important management decisions, the use of finders is unregulated, as long as the finders do not negotiate the terms of the deal and compensation is disclosed. If you look for money any other way, you will be selling a security.

For a public or registered offering, or a public/private hybrid offering under the Model Accredited Investor Exemption, there is no pre-existing relationship requirement between the promoter and the investors. However, for a private placement offering, management must have a pre-existing relationship with investors prior to the offering. In other words, you cannot rely on pre-existing relationships of finders in private placements.

The SEC's general position is that receipt of transaction-based compensation signals broker-dealer activity, requiring licensing, unless the finder's activities are limited to merely introducing the buyer and seller.

Therefore, in deciding whether and how to use finders for your deal, the questions you need to ask are: Does the transaction involve the sale of a security or not? If a security, which exemption is being relied on at the federal level and which exemptions are being relied on at the state level?

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