

## SEC Proposes Conditional Exemption for Finders of Investors in Private Offerings

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On October 7, 2020, the SEC proposed a conditional exemptive order from broker registration requirements for “finders” who assist issuers in finding accredited investors in a private securities offering. This is an area that has needed clarity for quite some time.

The proposal would create two types of finders, Tier I and Tier II, both of whom would be permitted to accept transaction-based compensation.

### Tier I Finders

A Tier I Finder would be allowed to provide contact information of potential accredited investors in connection with a single, private capital raising transaction by a single issuer in a 12 month period. A Tier I Finder could not have any contact with a potential investor about the issuer.

### Tier II Finders

A Tier II Finder could solicit potential accredited investors on behalf of an issuer, but the solicitation-related activities would be limited to:

- identifying, screening and contacting potential investors;
- distributing issuer offering materials to investors;
- discussing issuer information contained within offering materials, other than advice as to the valuation or advisability of the investment; and
- arranging or participating in meetings with the issuer and investor.

A Tier II Finder must also:

- provide disclosures of its role and compensation prior to or at the time of the solicitation; and
- obtain a dated written acknowledgment of receipt of the required disclosures from the investor.

## Conditions for Both Tier I and Tier II Finders

Both Tier I and Tier II Finders would be subject to the following conditions:

- the issuer must not be a reporting company filing reports under Sections 13 or 15(d) of the Exchange Act;
- the private offering of securities must be in reliance on an applicable exemption from registration under the Securities Act;
- the Finder may not engage in general solicitation;
- the potential investor must be an “accredited investor” as defined in Rule 501 of Regulation D or the Finder must have a reasonable belief that the potential investor is an “accredited investor”;
- the Finder provides services pursuant to a written agreement with the issuer that includes a description of the services provided and associated compensation;
- the Finder is not an associated person of a broker-dealer; and
- the Finder is not subject to statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act, at the time of his or her participation.

The SEC [provided a chart](#) that sets forth the permissible activities by Tier I Finders, Tier II Finders, and Registered Brokers under the proposed exemptive order. The proposed exemptive order is subject to a 30-day comment period following publication in the Federal Register.

For questions regarding the finders proposal, please contact your GableGotwals attorney or a member of our [Corporate & Securities team](#).



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