

# SEC Proposes Conditional Exemption for Tier I and Tier II Finders in Private Capital Raising

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On October 7, 2020, the SEC voted to propose a conditional exemption from federal broker registration for “finders” who assist issuers in raising capital in private placements with accredited investors. It would create two classes of finders: Tier I and Tier II Finders.

Tier I Finders would be limited to providing the contact information of potential investors in connection with a single 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 could solicit investors on behalf of an issuer, but the solicitation-related activities would be limited to: (i) identifying, screening, and contacting potential investors; (ii) distributing the issuer’s offering materials to investors; (iii) discussing the information included in any offering materials, provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment; and (iv) arranging or participating in meetings with the issuer and investor.

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

- the issuer is not public (i.e., required to file reports under Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (“Exchange Act”));
- the issuer is seeking to conduct the securities offering in reliance on an applicable exemption from registration under the Securities Act of 1933;
- the Finder does not engage in general solicitation;
- the potential investor is an “accredited investor” as defined in Rule 501 of Regulation D or the Finder has 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 that term is defined in Section 3(a)(39) of the Exchange Act, at the time of his or her participation.

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A Finder could not rely on the proposed exemption to facilitate a registered offering of securities, a resale of securities, or the sale of securities to investors that are not accredited investors or reasonably believed to be accredited investors. In addition, it could not: (i) be involved in structuring the transaction or negotiating the terms of the offering; (ii) handle customer funds or securities or bind the issuer or investor; (iii) participate in the preparation of any sales materials; (iv) perform any independent analysis of the sale; (v) engage in any “due diligence” activities; (vi) assist or provide financing for such purchases; or (vii) provide advice as to the valuation or financial advisability of the investment.

A Tier II Finder would have to disclose to potential investors its role and compensation prior to or at the time of the solicitation, and also obtain a dated written acknowledgment of receipt of the required disclosure from the investor prior to, or at the time of, any investment.<sup>[1]</sup>

In both tiers, the Finder could receive commissions or other transaction-based compensation.

Finders would remain subject to the anti-fraud provisions of the federal securities laws, and the proposal would not provide a basis for relief from applicable registration requirements if the Finder acts in another regulated capacity such as an investment adviser or a municipal advisor. The proposal also does not affect state law registration and other requirements.

The proposed exemption, if adopted, could be helpful to private funds and early stage businesses who seek to raise capital without having to engage a registered broker-dealer. Finders should be mindful of any applicable state law requirements.

The Commission requested comments on all aspects of the proposal within 30 days following publication in the Federal Register. The press release and related proposal can be found [here](#).

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<sup>[1]</sup> The disclosures must include:

- the name of the Finder;
- the name of the issuer;
- a description of the relationship between the Finder and the issuer (including any affiliation);
- a statement that the Finder will be compensated for his or her solicitation activities by the issuer and a description of the terms of the compensation arrangement;
- any material conflicts of interest resulting from the arrangement or relationship between the Finder and the issuer; and
- a statement that the Finder is acting as an agent of the issuer, is not acting as an associated person of a broker-dealer, and is not undertaking to act in the investor’s best interest.

The proposal would allow a Finder to make the disclosure orally, provided it is supplemented by written disclosure that satisfies all of the disclosure requirements no later than the time of any related investment. Both the written disclosure and investor acknowledgement may be physical (on paper) or electronic.

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