LEGAL-RISK WHITE PAPER

Paying Capital Raisers Without Broker-Dealer Registration

A decision framework for private real-estate securities offerings

NORTHBRIDGE PROPERTY PARTNERS

Hypothetical offering: $15 million from accredited investors under Regulation D

Currentness Research current through September 8, 2026

Audience Board, sponsor, legal, compliance, finance, and capital-markets teams

Important This educational white paper is not legal advice, does not create an attorney-client relationship, and cannot resolve registration status for any actual person. Broker status and remedies are fact-, forum-, and state-specific. Securities counsel should approve the engagement model and actual activities before investor outreach begins.

NAVIGATION

How to use this paper

The decisive question is functional: who is actually doing what, for whom, how often, and with what economic incentive?

Section	Decision use
1. Executive thesis	Board-level conclusion and immediate actions
2. Statutory frame	Why an exempt offering does not exempt the seller
3. Broker-status test	Activities and economics that drive the analysis
4. Compensation substance	Why labels, timing, and payee entities are not dispositive
5. Issuer personnel safe harbor	What Rule 3a4-1 does and does not protect
6. Finders and narrow exceptions	Current federal position and non-pathways
7. Northbridge phases	Application to the hypothetical facts
8. Structuring matrix	Relative risk of common arrangements
9. Defensible operating paths	Practical models and controls
10. Enforcement and remedies	Regulatory, monetary, contractual, and criminal exposure
11. State and diligence layer	Blue-sky, financing, disclosure, and record risks
12. Decision protocol	Questions, escalation triggers, and conclusion

Authority labels used throughout

A - Binding Statutes and rules in force, subject to controlling judicial interpretation.

B - Official guidance or enforcement SEC or FINRA material that is important but may be nonbinding, fact-specific, proposed, or settled.

C - Judicial authority Controlling only within the relevant court and on materially comparable facts; otherwise persuasive.

D - Practical inference A reasoned application or operational recommendation, not a quoted legal rule.

The separate Source Appendix identifies the authority class and status of each source. The separate Fact-Check Memorandum isolates the propositions most likely to be misstated in board materials or consultant agreements.

1

Executive thesis

The proposed 7% success-based capital-partner model presents severe federal registration risk even if every investor is accredited and the offering is exempt.

Northbridge may sell its own securities without becoming a broker merely because it is the issuer. That principle does not automatically extend to unrelated consultants, affiliates, or natural persons who repeatedly recruit investors. Section 15(a)(1) focuses on whether a person uses interstate means to effect securities transactions or to induce or attempt to induce purchases while required to register. The Exchange Act's broker definition is deliberately functional and reaches persons engaged in the business of effecting transactions for others. 15 U.S.C. § 78c(a)(4); 15 U.S.C. § 78o(a)(1); SEC Guide to Broker-Dealer Registration.

The contemplated second phase stacks the most important risk indicators: outside people are selected because they know accredited investors; they contact those investors; distribute the private placement memorandum; explain the opportunity; answer questions; arrange calls; encourage investment; and receive 7% only when money closes. SEC guidance treats solicitation, negotiation, transaction participation, a business of facilitating securities transactions, and compensation tied to outcome or deal size as significant broker indicators. Appellate cases similarly use a totality approach. No single factor is invariably dispositive, but this fact pattern is far from passive back-office consulting. SEC, Broker-Dealers (updated Apr. 24, 2026); SEC Guide to Broker-Dealer Registration; SEC v. Feng, 935 F.3d 721 (9th Cir. 2019); SEC v. Collyard, 861 F.3d 760 (8th Cir. 2017).

Calling the participants 'finders,' 'capital partners,' 'advisers,' 'strategic consultants,' or equity recipients does not decide the issue. Delaying payment, routing it through an LLC, or splitting the economics into a retainer plus a closing payment changes form, not necessarily function. Courts and SEC staff examine the actual activity and the economic connection to a completed securities sale. A genuinely fixed fee for services that do not involve investor targeting, contact, persuasion, negotiation, or transaction execution is materially lower risk, but a fixed fee is not a license to perform broker functions. 17 C.F.R. § 240.3a4-1; SEC Guide to Broker-Dealer Registration; SEC Staff, Brumberg, Mackey & Wall, P.L.C. (May 17, 2010); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019); EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021).

The cleaner operating choices are: use a registered broker-dealer or placement agent and properly associated personnel for investor-facing sales work; confine genuine consultants to non-sales deliverables for fixed or time-based compensation; or rely on the issuer's own associated persons only where the facts satisfy the issuer-personnel framework, including Rule 3a4-1. Counsel should review federal and state law before outreach, not after subscriptions arrive. 17 C.F.R. § 240.3a4-1; SEC Guide to Broker-Dealer Registration; FINRA Rule 2040; SEC, Exempt Offerings FAQs.

Immediate decision	Recommended board direction
Phase 1	Proceed only with a written, non-sales scope and activity controls.
Phase 2	Do not launch the proposed 7% outside-solicitor program absent a registered pathway and counsel approval.
Governance	Centralize investor communications, compensation approvals, licensing checks, and evidence retention.
Remediation	If outreach has begun, pause new contact and payments; preserve records; obtain privileged advice on status, disclosure, state filings, and corrective options.

Bottom line: the best reading of the cited framework is not that a success fee mechanically creates broker status. It is that Northbridge's proposed success fee, combined with targeted and persuasive investor-facing conduct, produces a high-confidence, high-severity registration concern. [D - application].

2

The statutory frame

Start with three distinct questions: is the instrument a security, is the offering exempt, and does the person selling it need broker registration?

A separate gate for the seller

Section 3(a)(4)(A) defines a broker, in relevant part, as a person engaged in the business of effecting transactions in securities for the account of others. Section 15(a)(1) generally makes it unlawful for a broker or dealer to use the mails or interstate commerce to effect transactions in, or induce or attempt to induce the purchase or sale of, securities unless registered. Those provisions do not turn on whether the purchaser is accredited, sophisticated, wealthy, or personally known to the solicitor. 15 U.S.C. § 78c(a)(4); 15 U.S.C. § 78o(a)(1).

Interests in a pooled real-estate entity are commonly offered as securities, and the hypothetical assumes they are securities. A Securities Act exemption, such as Rule 506(b) or Rule 506(c), addresses registration of the offering. It does not itself excuse a person acting as a broker from Exchange Act registration. The SEC's registration guide states this point expressly for private placements and Regulation D, including persons often called placement agents. SEC, Exempt Offerings (updated Jan. 26, 2026); SEC, Rule 506(b) Private Placements; SEC Guide to Broker-Dealer Registration.

The issuer versus people acting around the issuer

An issuer buying or selling securities for its own account is generally not a broker because it is not transacting for the account of others. But the analysis changes for natural persons and outside firms participating in the issuer's distribution. The SEC notes particular concern where issuer personnel are paid to sell, have few other duties, or routinely effect transactions. General partners soliciting limited-partnership investors are specifically within the historical concern described in the SEC guide. SEC Guide to Broker-Dealer Registration; SEC, Broker-Dealers (updated Apr. 24, 2026).

Entity boundaries do not always align with the functional inquiry. A third-party consultancy effects transactions for the issuer and its investors, not for its own account, when it becomes an ongoing distribution channel. An individual's conduct cannot be cleansed merely by directing the issuer to pay a wholly owned LLC. In Feng, the Ninth Circuit affirmed broker findings involving recruitment and transaction-based commissions routed through entities; in EdgePoint, a registered affiliate did not entitle the distinct unregistered contracting entity to its success fee. SEC v. Feng, 935 F.3d 721 (9th Cir. 2019); EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021).

A useful three-column discipline

Question	What it answers	What it does not answer
Offering exemption	Whether the issuer may offer and sell without Securities Act registration	Whether a solicitor is a registered broker
Broker status	Whether activity and business regularity bring a person within Exchange Act § 3(a)(4)	Whether every remedy or penalty follows automatically
Registration or exemption	Whether the person has a lawful route to perform that role	Whether antifraud, state, or contractual duties disappear

The Northbridge analysis therefore should not stop at 'Regulation D' or 'accredited investors.' Those are offering facts, not a broker-dealer answer. [A/B - rule and official guidance]. 15 U.S.C. § 78o(a)(1); SEC Guide to Broker-Dealer Registration.

3

How broker status is evaluated

There is no universal one-factor formula. The stronger analysis weighs activity, regularity, responsibility, and economic incentive together.

The activity factors

- Targeting or recruiting prospective investors, including choosing whom to approach because of expected capacity or interest. SEC Guide to Broker-Dealer Registration; SEC v. Feng, 935 F.3d 721 (9th Cir. 2019); SEC v. Collyard, 861 F.3d 760 (8th Cir. 2017).
- Initiating contact, pitching merits, recommending investment, overcoming objections, or otherwise inducing a purchase. 15 U.S.C. § 78o(a)(1); SEC, Broker-Dealers (updated Apr. 24, 2026); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019).
- Explaining material deal terms, risk, structure, projected returns, suitability, or comparative merits beyond faithfully transmitting approved materials. SEC Guide to Broker-Dealer Registration; SEC v. Feng, 935 F.3d 721 (9th Cir. 2019).
- Negotiating price or terms, steering diligence, coordinating subscriptions, or participating at other important stages of the transaction. SEC, Broker-Dealers (updated Apr. 24, 2026); EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021).
- Handling investor funds or securities, which is a particularly serious indicator even though it is not required for broker status. SEC, Broker-Dealers (updated Apr. 24, 2026); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019).

The business and regularity factors

Courts ask whether the person participates regularly, holds itself out as a source of transactions, has a history of selling for multiple issuers, or performs a role that resembles a distribution business. Employment by the issuer, other substantial duties, and frequency may matter. Collyard described nonexclusive factors including regular participation, issuer employment, commission versus salary, prior securities-selling history, advice, and active recruitment. Feng emphasized a broad totality, not a rigid checklist. SEC v. Collyard, 861 F.3d 760 (8th Cir. 2017); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019).

Compensation as evidence

Compensation contingent on a sale or measured by the amount raised gives the recipient a salesperson's stake in closing. The SEC calls this transaction-related compensation and treats it as a strong indicator. SEC staff in Brumberg denied requested no-action relief even where the proposed law firm described its role as limited introductions without negotiation or advice, because it would receive a percentage of capital raised. The staff inferred pre-selling and a sales incentive. The letter is not law, but it is directly relevant regulatory evidence. SEC, Broker-Dealers (updated Apr. 24, 2026); SEC Staff, Brumberg, Mackey & Wall, P.L.C. (May 17, 2010).

Important counterweight

It would be inaccurate to write that any success fee automatically makes the payee a broker. Kramer rejected the SEC's attempt to make transaction-based compensation alone dispositive and found the cited participation too isolated and remote on that record. That district-court decision is persuasive, not nationwide controlling authority, and its narrow facts do not resemble an organized group of five solicitors repeatedly pitching a $15 million offering. Still, it is a necessary guardrail against categorical language. SEC v. Kramer, 778 F. Supp. 2d 1320 (M.D. Fla. 2011); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019); SEC v. Collyard, 861 F.3d 760 (8th Cir. 2017).

Signal	Typical significance	Northbridge hypothetical
Success-based 7% fee	Strong broker indicator, not mechanically conclusive	Present
Targeted investor outreach	Direct solicitation evidence	Present
PPM distribution plus explanation	Moves beyond a name-only introduction	Present
Questions, calls, encouragement	Persuasive transaction participation	Present

4

Economic substance over compensation form

The legal inquiry follows the economic connection between pay and completed securities transactions, not the vocabulary chosen for the invoice.

Percentage, equity, and other close-linked economics

A cash commission equal to 7% of funded subscriptions is the clearest transaction-based form. Equity, profits interests, warrants, tokens, carried interests, debt forgiveness, or other noncash value can create a comparable incentive when the amount or entitlement depends on a securities sale. Kramer itself treated stock received in relation to transactions as potentially transaction-based compensation, even while refusing to make that factor dispositive. Rule 3a4-1 uses the words 'directly or indirectly' when excluding transaction-based remuneration from its issuer-personnel safe harbor. SEC v. Kramer, 778 F. Supp. 2d 1320 (M.D. Fla. 2011); 17 C.F.R. § 240.3a4-1.

A fixed retainer plus a closing bonus remains partly transaction-based. A retainer credited against a success fee, a 'milestone' reached only when investors fund, or equity vesting keyed to subscriptions ordinarily preserves the same economic connection. Delaying payment until months after closing does not necessarily sever that connection if the right to payment was earned by the close. These are practical applications of the activity-and-economics framework, not separate bright-line rules. [D - application]. SEC, Broker-Dealers (updated Apr. 24, 2026); SEC Staff, Brumberg, Mackey & Wall, P.L.C. (May 17, 2010).

Payee entity and invoices

Payment to an LLC instead of an individual can add a second registration problem, not solve the first. The SEC guide explains in the registered-broker context that an unregistered entity may not receive commissions earned by a registered representative merely because the person owns the entity; the separate entity must have an appropriate registration basis. EdgePoint likewise rejected an attempt by an unregistered contracting affiliate to rely on the registration of another affiliate. The exact outcome depends on the legal and factual relationship, but formality alone is weak protection. SEC Guide to Broker-Dealer Registration; EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021).

When fixed compensation actually lowers risk

Fixed or time-based compensation is materially more defensible when the underlying deliverables are also non-sales: market research that does not identify or rank live prospects; data-room organization; drafting issuer-approved factual materials with counsel; workflow design; internal training; or broker-dealer selection. The consultant should not contact investors, recommend the investment, answer merits questions, negotiate, route subscription documents, or receive funds. If the conduct is broker-like, a fixed fee does not eliminate the conduct evidence. SEC Guide to Broker-Dealer Registration; SEC, Broker-Dealers (updated Apr. 24, 2026).

Form	Risk reading	Control needed
7% of funded capital	High-risk transaction-based compensation	Registered placement-agent pathway
Equity worth more if raise succeeds	Potential indirect transaction economics	Counsel analysis of valuation, vesting, and activity
Monthly retainer + close bonus	The close bonus remains transaction-linked	Remove sales role or route through registered broker-dealer
Payment six months after close	Timing change alone is weak	Document what earned the fee
Fixed project fee for internal materials	Lower risk if work stays non-sales	Written scope, no-contact rule, evidence of deliverables

Drafting lesson: define permitted activity first, then choose compensation consistent with it. A clause saying 'not a broker' cannot overcome contrary performance. [D - operational conclusion].

5

Issuer personnel and Rule 3a4-1

The rule is a nonexclusive safe harbor for qualifying natural persons associated with an issuer. It is not a blanket issuer exemption and ordinarily does not cover unrelated outside consultants.

Threshold conditions

Rule 3a4-1 can prevent an associated person of an issuer from being deemed a broker solely because of participation in an issuer's sale if the person satisfies all threshold conditions and one of three activity branches. The threshold conditions include no statutory disqualification, no commission or other remuneration based directly or indirectly on securities transactions, and no current association with a broker or dealer. The rule defines an associated person of an issuer as a natural person who is a partner, officer, director, or employee of the issuer or specified related entities; an ordinary outside consultancy is not made eligible simply by contract language. 17 C.F.R. § 240.3a4-1; SEC Guide to Broker-Dealer Registration.

Three alternative activity branches

Branch	Core route	Practical limitation
Institutional / specified transactions	Sales limited to specified financial institutions or enumerated transactions, employee plans, or certain reorganizations	Not a general accredited-investor route
Substantial non-sales duties	Primary duties other than securities transactions; no broker role in prior 12 months; offering frequency limits	Requires real operating duties and cadence discipline
Restricted participation	Only issuer-approved written communications; responses limited to information in offering materials; ministerial work	No oral solicitation or persuasive merits discussion

The rule includes detailed conditions and timing provisions beyond this summary. It also says that failure to satisfy the safe harbor does not create a presumption that the person violated Section 15(a). That nonexclusive feature is important: outside the safe harbor, counsel returns to the statutory definition and the totality of conduct. It is equally important not to invert the rule and assume that anyone outside it is automatically safe. 17 C.F.R. § 240.3a4-1.

Implications for Northbridge

Northbridge's sponsor principals may have a viable route to communicate about the offering if they are genuine associated persons, receive no transaction-based remuneration, satisfy one branch, and stay within approved activity. The 12-month branch and recurring-offering history matter for an active real-estate sponsor. Titles created for the raise, nominal payroll, short-term secondments, or equity awards linked to subscriptions require skeptical review because actual duties and economic substance will be examined. [D - application]. 17 C.F.R. § 240.3a4-1; SEC Guide to Broker-Dealer Registration.

The proposed five capital partners are described as outsiders selected to source and persuade investors. On those facts, Rule 3a4-1 is not an obvious route: they may not be associated persons of the issuer, their 7% fee conflicts with the no-transaction-based-remuneration condition, and their planned oral sales activity goes beyond the restricted-participation branch. That is a strong application, not an adjudication of unstated facts. [A/D]. 17 C.F.R. § 240.3a4-1.

Controls should include role charts, ordinary-duty evidence, compensation approvals, an offering calendar, scripts, training, supervisory ownership, and a process for redirecting questions to counsel or a registered representative.

6

Finders, proposals, and narrow exceptions

As of the research date, there is no generally operative federal 'finder' exemption for the Northbridge capital-raising model.

The 2020 proposal is not law

In October 2020 the SEC proposed an exemptive order that would have created conditional Tier I and Tier II finder pathways for certain accredited-investor offerings by nonreporting issuers. The proposal was never adopted. SEC staff's comparison chart expressly said market participants could not rely on the proposal unless the Commission adopted a final operative order. In April 2026, the SEC's Small Business Capital Formation Advisory Committee again recommended adoption of a finders framework, confirming that the proposal had not itself become an available exemption. A committee recommendation is not a Commission rule or order. SEC, Proposed Finders Exemptive Order, Exchange Act Release No. 90,112 (Oct. 7, 2020); SEC Staff Comparison Chart: Proposed Finders Exemption; SEC Small Business Capital Formation Advisory Committee, Finders Recommendation (Apr. 14, 2026).

No-action letters are narrow staff positions

Older finder no-action letters are frequently cited in deal practice. They are fact-specific staff positions with no legal force or effect and do not bind courts or the Commission. Brumberg is especially useful because staff refused relief where the proposed intermediary would introduce a limited number of contacts, avoid negotiation and advice, yet receive a percentage of capital raised. It should be treated as risk evidence, not a free-standing rule that every introduction or fee is unlawful. SEC Staff, Brumberg, Mackey & Wall, P.L.C. (May 17, 2010); SEC Chair Paul S. Atkins, Remarks to Small Business Capital Formation Advisory Committee (July 22, 2025).

The statutory M&A broker exemption is different

Congress added a narrow M&A broker exemption in Exchange Act Section 15(b)(13), effective in 2023. It addresses the transfer of ownership and control of an eligible privately held company to a buyer that will control and actively manage the company, subject to exclusions for public offerings, shell companies, custody, passive buyers, and other conditions. The SEC staff withdrew its prior M&A no-action letter after the statute took effect. A passive purchase of partnership interests in a $15 million real-estate capital raise is not the acquisition-control transaction the statute describes. 15 U.S.C. § 78o(b)(13) (M&A brokers); SEC Staff, Withdrawal of M&A Brokers No-Action Letter (Mar. 29, 2023).

FINRA Rule 2040 does not authorize issuer payments

FINRA Rule 2040 directly governs FINRA members and associated persons. It restricts them from paying compensation to an unregistered person where registration is required by the recipient's activities or the payment. Its supplementary material requires reasonable support, periodic review, and records. The rule is not an issuer-side safe harbor and does not itself determine every Section 15(a) question. Its narrow foreign-finder provision does not fit the stated domestic Northbridge model. FINRA Rule 2040.

Claim heard in the market	Accurate response
'Accredited investors make a finder legal.'	No. Accreditation affects offering conditions, not broker status.
'The SEC approved two finder tiers in 2020.'	No. The Commission proposed, but did not adopt, the order.
'One introduction is always safe.'	No universal federal one-contact safe harbor exists; context still matters.
'The M&A broker law covers private raises.'	No. It is a conditional control-transfer exemption, not a general capital-raising exemption.

7

Applying the framework to Northbridge

The phase-by-phase analysis separates defensible non-sales work from the planned distribution activity that produces the central risk.

Phase 1 - fixed $20,000 strategy engagement

A fixed $20,000 project can be defensible if the deliverables are truly internal and non-sales: organizing the data room, refining issuer-approved narrative with counsel, preparing internal diligence responses, mapping the process, and helping select counsel or a registered placement agent. The agreement should prohibit identifying or ranking live investors, making investor contact, recommending the security, explaining merits, negotiating, collecting indications, handling subscription documents, or receiving funds. Actual performance, not the scope clause, controls. [D - application]. SEC Guide to Broker-Dealer Registration; SEC, Broker-Dealers (updated Apr. 24, 2026).

Phase 2 - five 'capital partners' at 7%

The proposed activities are qualitatively different. The capital partners would use their networks to contact accredited investors, send the PPM, explain the opportunity, answer questions, arrange sponsor calls, encourage investment, and receive 7% of capital closed. Those facts combine targeted solicitation, persuasive participation, transaction coordination, regularity across a planned group, and outcome-based compensation. Under SEC guidance and the appellate totality cases, there is a strong basis to expect broker treatment. Kramer prevents saying the fee alone decides the issue; it does not neutralize the other facts. [B/C/D]. SEC Guide to Broker-Dealer Registration; SEC, Broker-Dealers (updated Apr. 24, 2026); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019); SEC v. Collyard, 861 F.3d 760 (8th Cir. 2017); SEC v. Kramer, 778 F. Supp. 2d 1320 (M.D. Fla. 2011).

Phase 3 - cosmetic variants

Variant	Analysis
Pay the partner's LLC	Does not change the individual's acts and may create a separate-entity issue.
Call the 7% 'equity'	Noncash form may still be indirectly transaction-based if earned or valued by capital closed.
Pay a retainer now, close bonus later	The closing component remains linked to securities sales.
Wait six months to pay	Delay alone does not change what earned the payment.
Use 'introduction-only' in the contract	Helpful only if performance is actually limited; PPM explanation, questions, calls, and encouragement contradict the label.
Limit every investor to accredited status	May satisfy offering conditions but does not resolve broker registration.

Phase 4 - action plan

- Do not authorize investor contact or success-fee accrual until counsel confirms the pathway and relevant states. SEC, Exempt Offerings FAQs; SEC Guide to Broker-Dealer Registration.
- Engage a registered placement agent for investor-facing distribution and confirm that each natural person is appropriately associated. SEC Guide to Broker-Dealer Registration; FINRA Rule 2040.
- Keep non-sales consultants on fixed or time-based scopes with explicit no-contact and no-negotiation boundaries; monitor actual work. SEC, Broker-Dealers (updated Apr. 24, 2026).
- For issuer personnel, map each person to Rule 3a4-1 or document counsel's alternative totality analysis. 17 C.F.R. § 240.3a4-1.
- If any outreach has occurred, preserve communications and obtain privileged advice on payments, disclosure, state law, investor communications, and corrective steps.

Risk conclusion: Phase 1 can be designed into a lower-risk lane. Phase 2, as described, should be treated as a stop condition pending a registered solution. [D - high-confidence application].

8

Structuring matrix

This matrix ranks relative broker-registration risk, not business merit and not the separate antifraud, offering, fiduciary, tax, or state-law analysis.

Arrangement	Activity	Compensation	Relative risk	Reason
Internal project consultant	Data room, workflow, issuer materials; no investor contact	Fixed $20k	Lower	No solicitation and no close-linked economics, if performance matches
Market research consultant	Aggregated market analysis; no live-prospect list	Hourly/fixed	Lower	Farther from an investor transaction
Named-introduction service	Sends names and makes introductions only	Fixed per project	Moderate	Still intentional transaction sourcing; facts, frequency, and follow-up matter
Named-introduction service	Same limited activity	7% of funded subscriptions	High	Strong sales incentive plus transaction sourcing; Brumberg is adverse staff evidence
Outside capital partner	PPM, explanations, questions, calls, encouragement	Fixed fee	High	Conduct itself resembles solicitation and transaction participation
Outside capital partner	Same investor-facing sales work	7% success fee	Severe	Activity and economics point in the same direction
Issuer operating executive	Limited approved communications within qualifying branch	Salary unrelated to sales	Potentially lower	May fit Rule 3a4-1 if every condition is met
Issuer executive	Repeated capital raising; few other duties	Salary plus close bonus	High	Safe-harbor concerns and broker-like role
Registered placement agent	Approved solicitation and transaction work	Placement fee	Structured route	Registration, association, supervision, contract, and state requirements still apply
Domestic unregistered LLC	Receives a registered representative's commission	Commission	High	Separate payee is not automatically covered by the individual's association

Framework support: SEC Guide to Broker-Dealer Registration; SEC, Broker-Dealers (updated Apr. 24, 2026); 17 C.F.R. § 240.3a4-1; SEC Staff, Brumberg, Mackey & Wall, P.L.C. (May 17, 2010); FINRA Rule 2040; EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021).

How to read 'lower'

Lower does not mean exempt or approved. It means the stated facts remove important broker indicators. Live-prospect identification, repeated introductions, recommendations, negotiation, transaction documents, or close-linked economics can move a seemingly administrative role up the scale. A person also can have a state registration problem even if federal counsel reaches a lower-risk conclusion. [D]. SEC, Exempt Offerings FAQs; NASAA, Uniform Securities Act of 2002 (model act).

How to read 'registered route'

Hiring a registered firm is not a paper exercise. The correct legal entity must be engaged; participating natural persons must be appropriately associated and supervised; the scope and compensation must be permitted; communications and books-and-records processes must be observed; and state registrations or exemptions must be checked. A Series exam by itself is not registration, and work outside the registered firm's supervision is not necessarily protected. SEC Guide to Broker-Dealer Registration; FINRA Rule 2040.

9

Defensible operating paths

A compliant process puts distribution responsibility, compensation, supervision, and evidence in the same legal channel.

Path A - registered placement agent

Northbridge contracts with the registered broker-dealer entity. The firm confirms that the engagement, security, investors, states, compensation, advertising, diligence, and personnel fit its permissions and supervisory system. Investor-facing individuals act through and under the supervision of that firm. Northbridge should verify the firm and people, align payment instructions with the contract, and prohibit side agreements or redirected commissions. SEC Guide to Broker-Dealer Registration; FINRA Rule 2040.

Path B - issuer personnel within a documented framework

Genuine sponsor officers, directors, partners, or employees may communicate for the issuer, but Northbridge should test each person against Rule 3a4-1 and the broader broker definition. Compensation cannot be directly or indirectly transaction-based for safe-harbor reliance. The chosen activity branch should be identified in writing, and scripts, cadence, ordinary duties, prior broker association, prior offering activity, and escalation rules should be documented. 17 C.F.R. § 240.3a4-1; SEC Guide to Broker-Dealer Registration.

Path C - non-sales consultants

Outside consultants can support the offering without occupying the sales channel. Their statement of work should identify tangible internal deliverables, use fixed or time-based compensation, and bar investor contact, recommendations, negotiation, transaction documents, subscription tracking by source, or funds. Northbridge should not give them a contact list, email alias, CRM sales stage, quota, or investor-facing title inconsistent with that boundary. [D].

Minimum control set

Control	Evidence to retain	Owner
Role approval	Counsel memo or checklist; registration records; approved scope	Legal / compliance
Compensation approval	Formula, payee identity, invoice support, no side letter	Finance / legal
Communication control	Approved materials, scripts, training, monitored channels	Capital markets / compliance
Investor handoff	Clear point at which registered or authorized personnel take over	Deal lead
Funds and documents	Instructions barring intermediaries from custody; controlled subscription workflow	Finance / administrator
State review	Issuer, broker, agent, notice, fee, and exemption analysis by jurisdiction	Securities counsel
Periodic testing	Email/CRM review, invoices, interviews, certifications, exception log	Compliance

No single contract clause is a shield. The compliance objective is congruence: legal status, permitted conduct, actual conduct, supervision, payment, and evidence should all tell the same story. [D].

10

Enforcement and remedies

Exposure is real but not automatic. Remedy, amount, mental state, causation, jurisdiction, and procedure must be analyzed separately.

SEC civil and administrative tools

The SEC may seek injunctions in federal court and may pursue administrative cease-and-desist relief. Available remedies can include civil monetary penalties, disgorgement where authorized, prejudgment interest, censures, suspensions, and industry bars. Section 21(d) now expressly authorizes disgorgement in Commission actions, while Liu's net-profits and victim-benefit principles remain central to equitable disgorgement analysis. The precise remedy depends on the forum, statute, facts, limitation periods, and later precedent. 15 U.S.C. § 78u(d); 15 U.S.C. § 78u-3; Liu v. SEC, 591 U.S. 71 (2020); SEC, How Investigations Work.

For Exchange Act Section 21(d)(3), the SEC's current inflation table lists per-violation first-tier ceilings of $11,823 for a natural person and $118,225 for an entity; second-tier ceilings of $118,225 and $591,127; and third-tier ceilings of $236,451 and $1,182,251. The statutory alternative can be the gross pecuniary gain. Higher tiers require additional predicates, including fraud, deceit, manipulation, or deliberate or reckless disregard, and for the third tier substantial loss or significant risk. The SEC announced that the 2025 adjusted amounts continue in 2026 because no adjustment was required. These are ceilings, not automatic assessments. 15 U.S.C. § 78u(d); SEC, Civil Monetary Penalty Inflation Adjustments; SEC Release No. 33-11428 (July 1, 2026).

Representative settled enforcement

In Ranieri Partners, the SEC settled charges involving a consultant who solicited investors for private funds and received transaction-based compensation. The orders described distribution of offering materials, urging investments, analyses, and approximately $2.4 million in fees. The firm was charged with causing the violation and a senior executive with aiding and abetting based on facts that included providing documents and disregarding red flags. The firm paid a $375,000 penalty; the executive paid $75,000 and accepted a supervisory suspension; the consultant accepted an industry bar, with disgorgement waived based on financial condition. The parties settled without admitting or denying the findings. It is illustrative, not an adjudicated liability rule for every issuer. SEC, Ranieri Partners Press Release No. 2013-36 (Mar. 11, 2013); In re Stephens, Exchange Act Release No. 69,090 (Mar. 8, 2013); In re Ranieri Partners LLC, Exchange Act Release No. 69,091 (Mar. 8, 2013).

Issuer and principal exposure

The intermediary is not the only potential target. Section 20(a) provides controlling-person liability subject to a good-faith/no-inducement defense; Section 20(b) prohibits doing indirectly through another what a person may not do directly; and Section 20(e) gives the SEC aiding-and-abetting authority where a person knowingly or recklessly provides substantial assistance. Each theory has elements. Payment approval, management direction, supplied sales materials, knowledge of licensing concerns, and ignored red flags may matter, but issuer or officer liability is not automatic merely because an intermediary later is found to be a broker. [A/B/C]. 15 U.S.C. § 78t; In re Ranieri Partners LLC, Exchange Act Release No. 69,091 (Mar. 8, 2013).

11

Contracts, investors, criminal risk, and state law

The most common overstatements concern automatic rescission, automatic issuer liability, and criminal exposure for an innocent mistake.

Contract voidability and fee collection

Exchange Act Section 29(b) states that contracts made or performed in violation of the Exchange Act or its rules are void as to the violator's rights, subject to statutory text and extensive judicial interpretation. Courts generally ask whether the contract involved the prohibited performance, whether the party is within the relevant class, and whether the violation is inseparable rather than collateral. EdgePoint held an unregistered success-fee agreement unenforceable on its facts. Regional Properties, involving real-estate limited-partnership syndications, recognized Section 29(b) consequences but remanded for equitable issues. Berckeley emphasizes the direct-relationship requirement. The practical risk is loss or clawback of fees and leverage in disputes, not an automatic universal result. 15 U.S.C. § 78cc(b); EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021); Regional Properties, Inc. v. Financial & Real Estate Consulting Co., 678 F.2d 552 (5th Cir. 1982); Berckeley Investment Group, Ltd. v. Colkitt, 455 F.3d 195 (3d Cir. 2006).

Investor claims and rescission

The SEC warns small businesses that unregistered-broker activity can lead to litigation and rescission risk. That does not mean Section 15(a) automatically gives every investor a private rescission right. A claimant may rely on Section 29(b), a Securities Act registration or disclosure theory, contract law, or an applicable state securities statute; standing, privity, causation, limitations, tender, and remedy rules vary. If Northbridge discovers a problem, counsel should analyze the relevant investor agreements and states before promising or denying rescission. SEC, Broker-Dealers (updated Apr. 24, 2026); 15 U.S.C. § 78cc(b); Regional Properties, Inc. v. Financial & Real Estate Consulting Co., 678 F.2d 552 (5th Cir. 1982).

Criminal liability

Exchange Act Section 32(a) provides criminal exposure for a willful violation, with statutory maxima of $5 million and 20 years for a natural person and $25 million for an entity. A criminal case requires DOJ prosecution, a conviction, and proof of the charged elements beyond a reasonable doubt; the maximum is not a prediction of sentence. Willfulness does not necessarily require knowledge of the precise legal provision. Tarallo, addressing securities fraud in the Ninth Circuit, defined it as intentionally undertaking an act known to be wrongful; Section 32 also contains a limited no-imprisonment defense for a rule or regulation violation if the defendant proves lack of knowledge of the rule or regulation. A good-faith structuring error is therefore not equivalent to criminal liability, but ignorance of the citation is not a universal defense. 15 U.S.C. § 78ff(a); United States v. Tarallo, 380 F.3d 1174 (9th Cir. 2004), amended, 413 F.3d 928 (9th Cir. 2005).

State and practical consequences

Rule 506 can preempt state registration or qualification of the covered securities, but states retain antifraud authority and may require notices and fees. Broker, dealer, agent, issuer-agent, and finder rules vary. The review should include the issuer's state, the intermediary's location and activity, and every state in which offers or sales occur. The NASAA model act is useful orientation but is not law unless adopted, and states modify model provisions. SEC, Exempt Offerings FAQs; SEC Guide to Broker-Dealer Registration; NASAA, Uniform Securities Act of 2002 (model act).

Unresolved registration issues also can complicate audits, lender and institutional-investor diligence, offering disclosures, representations in later financings, indemnity and insurance questions, and records of capital-raising expenses. These are practical inferences rather than automatic legal penalties. [D].

12

Decision protocol and conclusion

The safest question is not 'What can we call this?' but 'What regulated function will this person actually perform, and through which lawful channel?'

Pre-launch decision protocol

Gate	Question	Stop / escalate trigger
1. Instrument	Are the interests securities and what exemption is planned?	Unclear characterization or offering pathway
2. Person	Which legal entity and natural persons will participate?	Payee or participant not matched to registration/issuer role
3. Activity	Who identifies, contacts, pitches, recommends, negotiates, coordinates, and handles documents or funds?	Outside person performs investor-facing sales or transaction work
4. Economics	What earns the payment, and does amount or entitlement depend on a sale?	Direct or indirect close-linked value
5. Regularity	Is this repeated, a business line, or part of selling for multiple issuers?	Organized or recurring transaction sourcing
6. Pathway	Registered broker-dealer, qualifying issuer person, or genuinely non-sales consultant?	No documented route
7. States	Where are issuer, intermediaries, offers, and purchasers located?	Unchecked broker/agent/finder or notice rules
8. Evidence	Do contract, scripts, actual messages, CRM, invoices, and payments align?	Words and performance diverge

Red flags requiring counsel before further activity

- A fee, equity award, or other value is earned, increased, vested, or released because an investor funds. SEC, Broker-Dealers (updated Apr. 24, 2026); 17 C.F.R. § 240.3a4-1.
- An unregistered outsider receives the PPM for onward distribution or is asked to explain, recommend, persuade, negotiate, or coordinate subscriptions. SEC Guide to Broker-Dealer Registration; SEC Staff, Brumberg, Mackey & Wall, P.L.C. (May 17, 2010).
- Payments are redirected to another entity, delayed, relabeled, netted, or embedded in another commercial arrangement. EdgePoint Capital Holdings, LLC v. Apothecare Pharmacy, LLC, No. 20-1810 (1st Cir. July 23, 2021); SEC v. Feng, 935 F.3d 721 (9th Cir. 2019).
- Someone cites the 2020 finder proposal, accreditation, a Series exam, or an old no-action letter as complete authorization. SEC, Proposed Finders Exemptive Order, Exchange Act Release No. 90,112 (Oct. 7, 2020); SEC Small Business Capital Formation Advisory Committee, Finders Recommendation (Apr. 14, 2026); SEC Guide to Broker-Dealer Registration.
- Outreach already occurred before the legal path, state coverage, or disclosure record was settled.

Conclusion

Northbridge can use legitimate external expertise to prepare an offering, and it can use properly structured issuer personnel or a registered placement agent to reach investors. What it should not do is create an outside sales force, compensate that force only for funded securities purchases, and expect labels or payment mechanics to substitute for registration. The federal framework is multifactor and fact-specific; that nuance narrows categorical statements but does not make the proposed facts close. The combined activity and economics place Phase 2 in the severe-risk band. [D - conclusion grounded in A/B/C authorities].

Recommended resolution Board action: authorize Phase 1 only within a non-sales statement of work; reject or pause Phase 2 as drafted; direct securities counsel to select and document a federal-and-state pathway; and require finance and compliance controls that prevent unapproved investor outreach or close-linked payments.

Limit This paper is educational and based on the stated hypothetical. It should be refreshed if material facts, governing jurisdiction, SEC rules or orders, or state law change.