

### Private Placements: Referrals & Commissions

The laws that apply to a private placement/offering of securities and the compensation paid by a fund, its general partner, and its investment manager (collectively, the “Company”) to third party marketers varies widely from state to state. Though commissions and referral fees may be the most common forms of compensation, legal definitions tend to be broad and typically include any monetary incentive paid directly or indirectly to a third party by a Company, including discounts or deferred compensation through a percentage of any management or performance fees.

#### Federal Restrictions

Under the private offering exemption of the Securities Act of 1933, a Company must refrain from making a public offering of the securities. Commissions paid to third parties could be a factor in determining the public or private nature of the offering; however, as long as such commissions are reasonable and paid on an investor-by-investor basis, rather than a single commission for a mass marketing, federal law should have no other impact on the commissions a Company can pay. It should be noted, however, that third party compensation must be disclosed in a private placement’s Form D disclosure document and in an investment adviser’s Form ADV.

#### State Restrictions

Each state will take one of the following positions in regards to compensation for sale of limited partnership interests in a private placement by a third party:

- No compensation is allowed;
- Compensation may only be paid to a registered broker-dealer;
- Compensation must be limited to statutory amounts; or
- No restrictions on compensation exists;

For each state in which a private placement interest is sold, such state’s law will need to be consulted prior to the payment of any direct or indirect compensation to third parties.

#### Case-By-Case Advice

Malik Law Group offers advice concerning restrictions on commissions in any state. Your compliance with the law is our highest priority; please contact us prior to the payment of any compensation for current restrictions that may apply in a given state.

*This Memorandum is intended to inform Malik Law Group’s clients of certain legal matters and is not intended as legal advice. You should consult a lawyer before taking any action based on the information contained above. Please contact Malik Law Group with any questions or comments you may have about this Memorandum.*

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