



# Dear Ethics Lawyer™

## The Legal Ethics Project. Supporting professionalism with information.

**Q:** Dear Ethics Lawyer,

Our firm represents a well-respected private equity fund company. I am a products liability lawyer and have not personally done legal work for this client. The company is now raising capital for a new fund and I would like to invest by accepting the terms of their offering, but I am concerned with the requirements of Model Rule 1.8(a) that appear to be triggered whenever a lawyer enters into a business transaction with a client. Do these requirements apply even though I don't personally represent the client? Do they apply even though I am simply investing under the terms of an offer made to the market in general, i.e., there would be no negotiation about it?

**A:** Model Rule 1.8(a) applies when a lawyer enters into a business transaction with a client. It requires that (1) the terms of the transaction are fair and reasonable to the client and disclosed to the client in an understandable writing; (2) that the client is advised in writing of the desirability of seeking counsel and given an opportunity to do so; and (3) that the client provide consent in a signed writing to the terms and the lawyer's role in the transaction. Rule 1.8(k) states that the requirements of Rule 1.8(a) apply to all lawyers in a firm, even if the lawyer involved in the business transaction does not represent that client personally. However, Comment (1) to the Rule makes clear that "the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client and the restrictions in paragraph (a) are unnecessary and impracticable." Here, if the company is offering investment terms in the new fund to the market, and you are simply accepting those terms and making an investment accordingly, Rule 1.8(a) does not apply.

*The Ethics Lawyer*

---

## About Dear Ethics Lawyer

The twice-monthly "Dear Ethics Lawyer" column is part of a training regimen of the Legal Ethics Project, authored by [Mark Hinderks](#), former managing partner and counsel to an AmLaw 132 firm; Fellow, American College of Trial Lawyers; and speaker/author on professional responsibility for more than 25 years. Mark leads Stinson LLP's [Legal Ethics & Professional Responsibility](#) practice, offering advice and "second opinions" to lawyers and law firms, consulting and testifying expert service, training, mediation/arbitration and representation in malpractice litigation. The submission of questions for future columns is welcome: please send to [mark.hinderks@stinson.com](mailto:mark.hinderks@stinson.com).

Discussion presented here is based on the ABA Model Rules of Professional Conduct, but the Model Rules are adopted in different and amended versions, and interpreted in different ways in various places. Always check the rules and authorities applicable in your relevant jurisdiction – the result may be completely different.