Film Production: Financing and Investment Issues
by Art Smith and Nicole Weaver

Film financing is one of the most difficult and least understood challenges facing a producer and it is fraught with perils for the unwary. Many independent film producers find themselves caught in the “Producer’s Paradox” namely: “You can’t sign talent and develop your screenplay without financing, but you can’t obtain financing without talent and a polished script.” Given that most film producers do not want to use their personal assets to fund their films, the most important issue for many producers is how to finance their film project with other people’s money.

The methods of financing film projects are as diverse as the film projects themselves, the most common ways being; “debt” (such as borrowing money); “equity” (such as selling membership interests); or a combination of both (such as a production support agreement or film finance agreement). If the producer has a track record of successful film production, then additional sources such as “pre-sale” of film distribution rights or studio financing are available. There are producers who merely package a project and assign the rights to another, better financed, production company. However, for most independent producers film financing is limited to debt and equity.

The problem with financing a project with debt is that such agreements require the payment of a sum-certain, with interest, on or before a specific date. A credit card is a simple form of debt, and is the worst possible way of financing your film (except, perhaps, using a home-equity line of credit secured with a mortgage on your home) for the reason that the debt usually must be repaid, and often many years before the film is commercially viable and money begins to flow back to the production company. If you have a day job, then incurring a small amount of debt (in the amount of $5,000) may be an acceptable option to finance a short film. Additionally, there are state-sponsored programs, such as the “Florida Film, Television and Digital Media Incentive” and tax exemptions which can provide assistance on reasonable terms and conditions, but generally debt financing has be used, and should only with great care.

The other major source of funds, equity financing, is problematic because a securities offering memorandum (or disclosure document commonly referred to as a “Private Placement Memorandum or PPM”) is required to raise money from investors outside of your family no matter how small the amount involved. Full disclosure is required under the securities laws and notice filings are required by the federal Securities and Exchange Commission (the “SEC”) and by the laws of **each** state in which investors reside (commonly known in some states as “Blue Sky Laws”). Violations of the SEC requirements and the applicable state securities laws carry both criminal and civil penalties.

A business plan IS NOT a Private Placement Memorandum. A business plan and a securities offering memo serve very different functions. A business plan is a marketing document created from a selling point of view, which necessarily contains optimistic information, forward-looking statements, hopes and dreams, and possibly financial projections. A securities offering memo, on the other hand, is a full disclosure document, which must contain all the bad news, risks, and must list and comment upon all possibilities that could go wrong so that each investor is fully aware of the risks involved.

In order to safely comply with these laws, a producer should work with an attorney who is familiar with both entertainment and securities regulation. This is not a “do-it-yourself” type of project nor is it wise to “cut and paste” portions of other PPM documents that you find on the web because the producer, without help of securities counsel, has very little notion of what provisions and information are needed.
The following is a summary of some of issues that arise when preparing a private placement investment offering under this exemption:

1. **No General Solicitation**. The producer may not engage in any “general solicitation.” This basically means that investors are limited to people that the producer actually knows, such as business associates, friends and family. The producer may not advertise for investors in a newspaper, or use a general mailing list or any other means of mass communication. There are specific rules regarding general solicitation, and an attorney can help to clarify exactly what a producer may and may not do when approaching potential investors.

2. **Accredited investor requirements**. Most investors should be “accredited investors.” An “accredited investor” is a person of high net worth, or certain kinds of banks or corporations. There are exact numbers and specific requirements that a person, bank, or corporation must meet in order to be considered “accredited.” These rules are complex and change from time to time as the laws are updated. When making an initial pitch, a producer can target people or corporations who probably have high net worth. However, before finalizing the deal, the producer should coordinate with an attorney, and review the investor’s financial statements, in order to make sure the investor is indeed “accredited.” Most states limit the number of unaccredited and accredited investors that a single offering may have. In Florida, a non-public offering not registered with the state is limited to 35 investors.

3. **Disclosure requirements**. A producer should present potential investors with a “private placement memorandum” or a “PPM.” The PPM is a document that discusses the business plan, the nature and structure of the investment, and the potential risks involved. While some states securities laws do not specifically require a PPM under a certain dollar amount, it is nonetheless a critical document to prove that the producer has disclosed everything the producer is required to disclose by law. By communicating with investors through a PPM, a producer can significantly reduce the possibility of lawsuits or criminal charges down the road. A PPM is more than just a business plan; it is a carefully drafted legal document and should be prepared by an attorney.

4. **Filings**. There are certain documents that the producer must file with the state and Federal governmental authorities when issuing securities. Securities laws require these

filings, and the filings act to alert the relevant governing bodies that the producer is conducting an exempt securities offering.

As you might expect, an essential part of any request for financing is for the producer to develop a credible budget and production timeline. Without both of these documents, prepared by someone with experience in film production, the producer should not undertake any serious fundraising.