

Dear Ladies and Gentlemen:

I am a securities attorney who has been in private practice in the Dallas-Fort Worth area since 1977. In addition, I have owned and operated this law firm (i.e., a small business) for 15 years.

Our firm is a boutique, and many of our clients are small businesses seeking to raise capital through private placements. In other words, our clients are looking for the capital to finance their version of the American Dream.

I applaud the commission's inquiry to facilitate small business raising capital. In light of the difficulty small businesses are having in obtaining commercial loans, this would be welcome relief to many business owners.

With respect to the commission's request for suggestions to remove impediments to small capital raising, I have the thoughts below. These comments are mine alone.

1. Private Placement Broker-Dealers. The issue here is the large number of private placement broker-dealers (some call themselves "finders", although their activities go beyond the narrow scope outlined in the commission's no-action letters on this topic) who fail to register as brokers under Sec. 15(b) of the Securities Exchange Act of 1934. This is not a new issue. A lengthy study on this topic was published by a preeminent committee of the American Bar Association in May 2005. *Report and Recommendations of the Task Force on Private Placement Broker-Dealers*, 60 Bus.Law. 959. Also, I believe that these unregistered broker-dealers have been a subject discussed at the SEC's annual forum on small business capital formation. To date, the commission has not acted.

As the commission staff doubtless is aware, these unregistered brokers come in all sizes and have various levels of sophistication and integrity. Practitioners like the attorneys in our firm regularly hear the excuse for compliance, "Everyone is doing it," with "it" being flaunting compliance with the current B-D registration requirements. Unfortunately, the statement is correct, and the widespread non-compliance presents a myriad of contingent liabilities for issuers who use these unregistered brokers. I urge the commission to adopt a limited form of registration that makes registration feasible for the small private placement broker-dealer. The May 2005 Task Force Report is a good starting point. By doing this, the commission would make legitimate the current efforts by these unregistered intermediaries and allow more capital to reach small business.

In addition, it should be noted that attorneys and CPAs may be the only financial advisors that many small businesses can afford. Also, many of these clients do not know any persons or entities that could or are willing to invest the amounts their companies seek. I ask the commission to consider expanding the ancillary-to-professional-services interpretations excluding from the B-D registration requirements professionals introducing issuers to possible funding sources. This interpretation would continue to be available only if no transaction-based compensation is paid.

2. Clarification of Who Can Receive Offers. I applaud the recent interest in clarifying or expanding what is not a public solicitation. My clients seem to have only limited interest in internet offerings or offerings through social media. However, they often want to approach a "friend-of-a-friend" about their private placement. It would greatly help if there was clarification that

offers to offerees with whom the issuer (or any broker-dealer) does not have a preexisting relationship are OK. I realize this is the trend, but clarification on this would be helpful.

3. Effect of Sarbanes-Oxley. In the past, an entrepreneur would come to me with a dream for his company and might add that wouldn't it be great if his company could go public. Today, I rarely hear this, and when I do I usually say "Forget it. There are too many other financing options, and your company probably will not be large enough for an IPO to be cost effective for many years."

On the effects of SOX, I speak with first-hand experience. A few years ago, a successful and growing company represented by us was attempting to go public. They had recognized underwriters waiting to make the IPO. However, the crushing weight of the outside accounting fees, establishing internal controls and legal costs was too much. Management and the Board gave up the IPO and sold the company.

Immediately after the enactment of SOX, representatives of the Toronto Stock Exchange and the AIM Market in London were attending meetings of the American Bar Association's Business Section offering their markets as less burdensome alternatives to the U.S. securities markets. If someone wanted to make a meaningful study of the effects of SOX, I suggest looking at the U.S.-based companies that have conducted offshore IPOs since the enactment of SOX. I believe the results would suggest that the U.S. has exported a significant part of the smallcap IPO market. If my hunch is confirmed, that is a very sad result. The U.S. capital markets have traditionally been the markets of choice.

4. Dodd-Frank. I fear that there is a risk that some of the reforms in the Dodd-Frank Act have applications that reach much farther than intended. For example, I wonder if, in certain instances, investment vehicles (e.g., limited partnerships, limited liability companies) formed by a local business person to invest in yet-to-be-identified oil and gas properties or royalties, various financial obligations or real estate can run afoul of the revised requirements for registration of investment advisers. (These offerings are sometimes called "blind pools", and they may purchase assets that, for one reason or another, may be "securities".) Local, non-traded private placements by entities owning these types of assets, not public securities or hybrid derivatives, are hardly the stuff that Dodd-Frank was intended to address. Frankly, application of these requirements to small private investments is going to kill some offerings and will lead others to consider non-compliance. An exemption seems in order here.

Again, I welcome the commission's interest in removal of impediments in this area. I am always available if I can answer questions or otherwise be of assistance.

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