

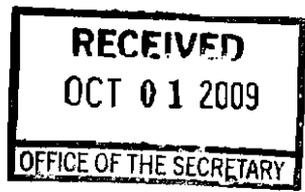
Benedetto, Gartland & Company, Inc.
1330 Avenue of the Americas, New York, New York 10019
Telephone 212.424.9700
Facsimile 212.262.8708

B E N E D E T T O
G A R T L A N D
& C O M P A N Y

Investment Bankers

September 30, 2009

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090



Re: Proposed Rule 206(4)-5 – File No. S7-18-09

Dear Ms. Murphy:

I am writing to comment on proposed rule 206(4)-5 (the “Proposed Rule”).

Benedetto, Gartland & Co., Inc. is a registered broker dealer and FINRA member. For the past 20 years our principal business had been acting as placement agent for venture capital and private equity funds. We have a particular focus on representing smaller, less well-known and first time funds. Over the years we have seen the corrosive effect that “pay for play” practices at a small number of institutions have had upon this marketplace and we applaud the Commission’s efforts to address them. At the same time we are concerned that the Proposed Rule would negatively impact both smaller, less well known venture capital and private equity funds (by making it more difficult for them to raise capital) and the government investors themselves (by reducing the universe of smaller venture capital and private equity funds in which they would be eligible to invest). The ultimate impact would be borne by the thousands of smaller U.S. companies that rely on private financing from such funds to start and grow their businesses.

Fortunately, the discussion to the Proposed Rule suggests a less onerous solution than a total ban on using third party solicitors: requiring that third-party solicitors abide by the same limitations on contributions that the Proposed Rule will impose upon investment advisors.¹ We believe further that this exception should only be available to third-party marketers that are registered as broker-dealers.

Role of Placement Agents in Venture Capital and Private Equity

The larger and better-known venture capital and private equity funds will not be impacted by the restrictions on the use of third-party marketers in the Proposed Rules as they already have, or can hire, in-house staffs of fundraising professionals. However, venture capital and private equity are still cottage industries with many smaller firms that could not afford the cost of a full-

¹ SEC Release No. IA-2910; File No. S7-18-09 (August 3, 2009) (the “Proposing Release”) at p.51.

time fundraising professional, particularly when they only raise a new fund every 3-5 years. Instead these firms turn to placement agents to assist them in this process.

The recent pay-for-play scandals have highlighted one aspect of the role of placement agent: that of introducing a manager to a prospective investor. In many cases however this is only a minor part of the placement agent's role. Far more important is the work we do to prepare an offering to be brought to market. Before bringing a fund to market we conduct extensive due diligence on the team, strategy and track record, and help managers determine market terms for their proposed investment partnership. We also help prepare offering materials that tell their story in an appropriate manner, consistent with the disclosure requirements of securities laws and the information requirements of the institutional investor community.

This front-end work is analogous to the efforts of an investment bank preparing a client for an IPO. Similarly to the case of an IPO, the reputation of a placement agent for representing talented venture capital and private equity managers can help the institutional investors sort through the literally hundreds of funds they are presented with every year. In short, our aim is both to make a very inefficient and lengthy process run more smoothly for our clients and to provide the institutional investor community with less well known yet thoughtfully vetted and professionally advised venture capital and private equity funds to consider for possible investment.

If the Proposed Rule is adopted, some venture capital and private equity funds will decide to forego the use of a placement agent so as not to be precluded from accepting government investors. Many others, however, will conclude that they lack the experience to enter the market on their own and therefore continue to retain placement agents. However, these funds will be raised solely from other institutional investors such as endowments, insurance companies and foreign investors.

The smaller venture capital and private equity funds provide an important source of capital to the small, entrepreneurial businesses that are such an important strength in our economy. For example, one of our clients has provided early stage financing to dozens of start-up biotech companies seeking to develop breakthrough products. Another has invested in more than a dozen small manufacturing companies located throughout the Midwest, thereby allowing them to continue operations in the U.S. while many of their competitors ship production, and jobs, overseas. By denying these funds the expertise they can obtain from a placement agent, the Proposed Rule would increase their cost of obtaining capital and reduce the availability of funding for the businesses in which they invest.

There is also a frequently stated view that smaller, newer private equity funds deliver higher returns than do larger more established funds. Smaller funds also provide an important source of diversification to the extent that they invest in sectors or companies not in the portfolios of larger funds or public stock managers. Many institutions also seek to invest with "emerging managers" in the hope of establishing a relationship with a leader of the future. If a large number of smaller venture capital and private equity fund managers continue to work with

placement agents when they raise capital, the government investors the Proposed Rule seeks to protect will find their investment options limited and potential returns reduced.

Proposed Prohibition on Use of Third-Party Solicitors

For reasons discussed above, the prohibition on the use of third-party solicitors contained in the Proposed Rule would make it more difficult for smaller, less established venture capital and private equity funds to raise capital, for government investors to invest in this desirable segment of the alternative asset class and for small, entrepreneurial companies to finance their growth.

The Proposing Release suggests that an alternative approach (essentially holding investment advisors accountable for the contributions of their third-party solicitors) would impose "significant compliance challenges."² While this may be true, in our view this is a challenge that many venture capital and private equity managers would willingly accept. In addition, legitimate placement agents that are registered broker dealers and take their own compliance obligations seriously, would gladly work under such restrictions if the alternative was a prohibition on approaching such an important segment of the institutional investor community.

The burden would, of course, fall on the private equity fund to use great care in selecting a placement agent as well as in monitoring its behavior during the course of an offering. Given past abuses it would make sense to limit any exception to the ban on third-party solicitors to placement agents, or third-party solicitors, that were registered as broker dealers and that affirmatively agreed to abide by the restrictions that the Proposed Rule imposes on their clients.

Conclusion

As noted, we applaud the Commission's effort to eliminate pay-for-play practices and restore a level playing field in obtaining investments from government investors. At the same time we are concerned that the Proposed Rule will have an adverse impact on the ability of smaller venture capital and private equity funds to raise capital, on the investment options available to government investors and ultimately on small U.S. businesses. We believe that the Commission's objectives can be fully achieved by adding an exception to the proposed ban on the use of third-party solicitors for solicitors who are registered as broker dealers and are affirmatively willing to be subject to whatever pay-for-play restrictions are imposed upon their clients.

We hope that the Commission will consider these comments prior to adopting any final rule.

Very truly yours,



Russell P. Pennoyer
President

² Proposing Release at p. 51.