SECURITIES AND EXCHANGE COMMISSION
ADVISORY COMMITTEE ON SMALL AND EMERGING BUSINESSES

Finders and other Intermediaries in Small Business Capital-Raising Transactions

Discussion Topics

July 15, 2015

I. Issues are well-documented and long-standing
   b. Definition of “broker” subject to ambiguities and leads to significant non-compliance
   c. Failure to provide relief impedes capital formation for smaller companies
   d. Full-blown FINRA membership process is deterrent to meaningful oversight
   e. Appropriate regulation would enhance economic growth and job creation
   f. Solutions are achievable with SEC leadership, coordination with FINRA and States

II. Small Business Forums have recommended alternatives, including that the SEC:
   a. “allow ‘private placement brokers’ to raise capital through private placements of issuers’ securities offered solely to ‘accredited investors’ in amounts per issuer of up to 10% of the investor’s net worth (excluding his or her primary residence), with full written disclosure of the broker’s compensation and any relationship that would require disclosure under Item 404 of Regulation S-K, in aggregate amounts of up to $20 million per issuer” (2009)
   b. “adopt a financial intermediary exemption that would remove from the scope of federal broker registration requirements persons who operate in a limited capacity to assist smaller issuers in raising private capital subject to investor protection safeguards” (2011)
   c. “Join with NASAA and FINRA in the effort to implement the basic principles of the American Bar Association Task Force on Private Placement Brokers. To achieve this goal, [the Commission should] join NASAA and FINRA in developing a timeframe for quarterly or other regular meetings – with specified benchmarks – until a mutually agreeable regime of finder registration and regulation is achieved” (2014)

III. Guiding principles for moving forward
   a. Rules should be transparent, proportional to needs/risks, capable of implementation
   b. To enhance capital formation and protect investors, the rules must be enforced
   c. SEC should provide leadership in joint effort with FINRA and NASAA

IV. Issues for consideration and resolution
   a. Definition and segmentation of covered persons
   b. Limitation on permissible activities
   c. Disqualifications
   d. Disclosure of compensation/other relationship with issuer, reporting; other regulation
   e. Legal and practical challenges and impediments
   f. Other issues
Issues for Consideration and Resolution

- Definition and segmentation of covered persons
  - Identify the types of persons who participate in finder and other intermediary activities
  - Differentiate among those classes of persons – e.g.
    - Finders – referrals and introductions only
    - Advisors – more expansive internal activities
    - Intermediaries – limited pre-selling
  - Scale regulations according to the class of participants
- Limitation on permissible activities
  - For each covered class, provide appropriate limitations on the activities conducted
  - Consider limitations on size of offerings, and number of transactions or purchasers
  - Determine what constitutes a “small business” issuer for purposes of the rules
- Threshold Restrictions
  - No handling of customer funds or securities
  - Participation permitted only in private placements, not registered offerings
  - Facilitated transactions limited to accredited investors and other qualified purchasers
- Disqualifications
  - Appropriate bad actor disqualifications
  - Not available for intermediary (and, if an entity, its officers, directors and participating employees) that (i) has been barred from association with a broker dealer by the SEC, any state or any self-regulatory organization; or (ii) is suspended from association with a broker-dealer
  - No disqualification or other sanctions for failure to register as a broker prior to effective date of the new rules
- Regulation and reporting
  - No-action letter approach
  - Self-executing status - similar to Investment Advisors Act solicitors rule
  - Registration – similar to Dodd-Frank Act reporting by exempt advisors
  - Membership in FINRA or another self-regulatory organization
  - Written disclosure requirements
    - identity of the intermediary
    - that the intermediary represents the issuer and not the investor
    - relationship, including any affiliation, between intermediary and issuer
    - compensation arrangements, including nature and amount of payments
  - Continuing applicability of other provisions, including the anti-fraud provisions, of the federal and state securities laws
- Legal and practical challenges and impediments
- Other issues
  - Dollar thresholds on amount raised in any transaction
  - Annual filing or other ongoing reporting requirements
  - Examinations (routine, for cause)
  - Fee-sharing with registered broker-dealers
  - Escrow of funds in minimum offerings
  - Technical FINRA requirements relating to “recommendations,” “know your customer” and “suitability”