

As a member of the investment, venture capital and syndicate community for over three decades, I welcome this opportunity to have some input into rule changes that could significantly alter the capital raising process. Although I fundamentally agree with most of the promulgated rule changes, I feel that some of the rule misses the point that the philosophy of the '34 Act was to protect the public investor. This rule should put "PUBLIC" back in the IPO distribution system. With this in mind, I have noted below the areas that I feel need clarification, elaboration or deletion:

2712. IPO Allocations and Distributions

(a) Quid Pro Quo Allocations

No member or person associated with a member may offer or threaten to withhold shares it allocates in an initial public offering ("IPO") as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member.

(b) Spinning

No member or person associated with a member may allocate IPO shares to an executive officer or director of a company, or to a person materially supported by such executive officer or director:

- (1) if the member has received compensation from the company for investment banking services in the past 12 months;
- (2) if the member expects to receive or intends to seek investment banking business from the company in the next 6 months; or
- (3) on the express or implied condition that such executive officer or director, on behalf of the company, direct future investment banking business to the member.

For purposes of paragraph (b)(2), a member that allocates IPO shares to an executive officer or director of a company, or a person materially supported by such officer or director, from which it receives investment banking business in the next 6 months will be presumed to have made the allocation with the expectation or intent to receive such business. A member, however, may rebut this presumption by demonstrating that the allocation of IPO shares was not made with the expectation or intent to receive investment banking business.

(c) Policies Concerning Flipping

(1) No member or person associated with a member may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares in an IPO that are subsequently flipped by a customer, unless the managing underwriter has assessed a penalty bid on the entire syndicate. This seems to miss the point that institutional investors are now given favored nation status when it comes to ignoring penalty bids thereby "flipping" with impunity.

(2) In addition to any obligation to maintain records relating to penalty bids under SEC Rule 17a-2(c)(1), a member shall promptly record and maintain information regarding any penalties or disincentives assessed on its associated persons in connection with a penalty bid.

(d) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below.

(1) “Flipped” means the initial sale of IPO shares purchased in an offering within 30 This time period should be at the discretion of the managing underwriter. If not and institutions are included, many investors may sell on the 31st day. days following the offering date of such offering.

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(2) “Penalty bid” means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

(3) “Material support” means directly or indirectly providing more than 25% of a person’s income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support. Should this not be part of Rule 2790?

(4) “Institution” should be defined. For example, does this term include hedge funds?

(e) IPO Pricing and Trading Practices

In an equity IPO:

(1) Reports of Indications of Interest and Final Allocations. The book-running lead manager must provide to the issuer’s pricing committee (or, if the issuer has no pricing committee, its board of directors):

(A) a regular report of indications of interest, including the names of interested institutional investors and the number of shares indicated by each, as reflected in the book-running lead manager’s book of potential institutional orders, and a report of aggregate demand from retail investors;

(B) after the settlement date of the IPO, a report of the final allocation of shares to institutional investors as reflected in the books and records of the bookrunning lead manager including the names of purchasers and the number of shares purchased by each, and aggregate sales to retail investors;

(2) Lock-Up Agreements. Any lock-up agreement or other restriction on the transfer of the issuer’s shares by officers and directors of the issuer shall provide that:

(A) Any lock-up agreement or other restriction on the transfer of the issuer’s shares by officers and directors of the issuer shall provide that such restrictions will apply to their issuer-directed shares Does this include friends and family of the issuer who are allocated stock on the offering?; and

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(B) At least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer’s shares, the book- running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service;

(3) Agreement Among Underwriters. The agreement between the book-running lead manager and other syndicate members must require that any shares returned by a purchaser to a syndicate member after secondary market trading commences be used to

(a) offset the existing syndicate short position or (b) if no syndicate short position exists, the member must offer returned shares at the public offering price to unfilled customers’ orders pursuant to a random allocation methodology This should be defined.

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(4) Market Orders. No member may accept a market order for the purchase This could be a syndicate managers worst nightmare if this means that no market orders to buy by clients can be entered by any firm. of IPO shares during the first day that IPO shares

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commence trading on the secondary market. A broad distribution on the offering would abrogate the necessity of this restriction.

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Many of the issues that this rule change purports to solve could be possibly be handled better by the use of a broad variation of the random allocation methodology. The term Initial Public Offering has become a misnomer in that the same powerful institutions are often allocated the bulk of "hot" new issues. If the test were not only the power of the commissions generated by a particular account but rather the suitability of the allocation relative to the account objective and the accounts usual investment strategy.

If you would like an elaboration of the aforementioned suggested changes I may be reached at my e-mail address.