

**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**
  - a. 2005 ABA Task Force, 2006 SEC Advisory Committee, Small Business Forums
  - 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”