

Investment Management Alert

March 14, 2013

Private Equity Fund Manager Sanctioned by SEC for Violation of Broker-Dealer Registration Requirement by Unaffiliated Third Party Solicitor

On March 8, 2013, the Securities and Exchange Commission (SEC) brought an enforcement action against Ranieri Partners LLC, a prominent investment adviser to private equity funds, and one of its senior managing partners relating to the investor solicitation activities that were conducted on behalf of the adviser by a “consultant” that was not registered as a broker-dealer with the SEC. The adviser was charged with “causing” the violation of the registration provisions of the Securities Exchange Act of 1934, as amended, and the managing partner was charged with aiding and abetting the violations. The SEC’s enforcement action, especially when coupled with statements by the SEC’s inspection staff,¹ demonstrates that the SEC and its staff have begun to focus on the use of unregistered solicitors to seek investors in private investment funds. The SEC also brought a separate action against the consultant himself for exceeding the limited role of a “finder” without registration as a broker-dealer with the SEC. The consultant was permanently barred from the securities industry.

Factors Emphasized

The consultant solicited a total of three institutional investors—a corporation, an endowment and a state pension plan—in two offerings. There was no allegation of fraud or other substantive misconduct. The SEC claimed that the consultant exceeded the introductory role of a “finder”² due to his receipt of transaction-based compensation and his interaction with potential investors. In particular, the SEC emphasized that the consultant (i) sent private placement memoranda, subscription agreements and other diligence materials to potential investors, (ii) suggested to at least one potential investor that it reallocate its portfolio to accommodate an investment in the adviser’s funds, (iii) provided potential investors with his analysis of the adviser’s funds’ strategy and track record and (iv) provided potential investors with confidential information relating to the identity of other investors and their capital commitments to the adviser’s funds.

In taking action against the adviser, the SEC focused on the adviser’s actions that enabled the consultant’s violations and its failure to supervise his activities. Despite claims that the adviser prohibited

¹ The SEC staff stated in its alert Examination Priorities for 2013 (available [here](#)) that it will thoroughly examine investment advisers’ financial statements and other records to uncover undisclosed solicitation arrangements.

² A finder is a person that is not required to be registered as a broker-dealer because he or she is not “engaged in the business of effecting transactions in securities” due to his or her limited role in the capital introduction process. According to the SEC staff’s previous no-action letters, the finder’s role was limited to merely introducing the potential investor to the issuer of securities. The SEC staff has recently further narrowed the bases on which it would provide no-action relief to finders in its letters to Hallmark Capital Corporation (publicly available June 11, 2007 and available [here](#)), John W. Loofbourrow Associates, Inc. (publicly available June 29, 2006 and available [here](#)) and Brumberg, Mackey & Wall P.L.C. (publicly available May 17, 2010 and available [here](#)).

the consultant from direct client contact, the adviser's employees provided the consultant with copies of the relevant private placement memoranda, supplements, subscription agreements and other marketing materials. The SEC also claimed that the adviser failed to supervise the consultant and ignored obvious signals of unauthorized client contact such as requests for travel and other expense reimbursements relating to meetings with potential investors.

Resolution

The SEC settled the action against the adviser for \$375,000 and against the managing partner for \$75,000 along with a suspension from association in a supervisory capacity with an investment adviser, broker-dealer or other SEC-registered market participant. The SEC settled the action against the consultant for a disgorgement of more than \$2.4 million in improper compensation, the payment of additional prejudgment interest and its consent to be barred from association with any broker, dealer, investment adviser or other SEC-registered market participant. In reaching a settlement with the adviser, the SEC noted that the adviser had modified its policies, apparently prior to the SEC staff's investigation, to prohibit the retention of any solicitor that is not a registered broker-dealer.

Conclusion

Registered investment advisers can expect the SEC staff to focus on their private fund clients' solicitation of investors during upcoming inspections. In anticipation of any examination, advisers should review their use of solicitors and consider revising their policies relating to the solicitation of private fund investors. The SEC's action against the adviser and the managing partner may be found [here](#), and the SEC's action against the consultant may be found [here](#).

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