

Client Advisory | *May 2010***FINRA Issues Due Diligence Reminder**

On April 20, 2010, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 10-22 reminding broker-dealers of their obligation to conduct reasonable due diligence investigations of issuers in PIPEs and other private placements.



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The Notice also reminded broker-dealers of their obligation to analyze whether an investment is suitable for particular investors.

The Notice outlines due diligence procedures that many broker-dealers would already consider good practice, but by doing so signals that FINRA is concerned about the state of practice in some cases and will be focusing on deal diligence in its regulatory process. The Notice indicated that the scope of what constitutes a reasonable investigation will be based on various facts and circumstances, including the broker-dealer's affiliation with the issuer, its role in the transaction and preparation of offering materials and whether the offerees are retail or institutional investors.

FINRA noted that member firms must have supervisory procedures that ensure

that personnel conduct reasonable due diligence on each private placement, and that records should be maintained that document the process and results of such investigation. Accordingly, broker-dealers should:

- Review existing supervisory procedures and consider them against the "best practices" outlined in the Notice.
- Ensure that personnel are keeping detailed records of transactional due diligence.
- Consider advance diligence practices for anticipated overnight and other fast paced deals.

While the FINRA Notice identifies procedures that many broker-dealers have in place, it is a reminder of the importance of making sure these practices are followed.

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