

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.



*William C. Hicks, Partner*

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.

BOSTON MA | FT. LAUDERDALE FL | HARTFORD CT | MADISON NJ | NEW YORK NY | NEWPORT BEACH CA | PROVIDENCE RI  
STAMFORD CT | WASHINGTON DC | WEST PALM BEACH FL | WILMINGTON DE | LONDON UK | HONG KONG (ASSOCIATED OFFICE)

This advisory is for guidance only and is not intended to be a substitute for specific legal advice. If you would like further information, please contact the Edwards Angell Palmer & Dodge LLP attorney responsible for your matters or the attorney listed below:

William C. Hicks, Partner

617.239.0435

whicks@eapdlaw.com

This advisory is published by Edwards Angell Palmer & Dodge for the benefit of clients, friends and fellow professionals on matters of interest. The information contained herein is not to be construed as legal advice or opinion. We provide such advice or opinion only after being engaged to do so with respect to particular facts and circumstances. The Firm is not authorized under the U.K. Financial Services and Markets Act 2000 to offer UK investment services to clients. In certain circumstances, as members of the U.K. Law Society, we are able to provide these investment services if they are an incidental part of the professional services we have been engaged to provide.

Please note that your contact details, which may have been used to provide this bulletin to you, will be used for communications with you only. If you would prefer to discontinue receiving information from the Firm, or wish that we not contact you for any purpose other than to receive future issues of this bulletin, please contact us at [contactus@eapdlaw.com](mailto:contactus@eapdlaw.com).

© 2010 Edwards Angell Palmer & Dodge LLP a Delaware limited liability partnership including professional corporations and Edwards Angell Palmer & Dodge UK LLP a limited liability partnership registered in England (registered number OC333092) and regulated by the Solicitors Regulation Authority.

Disclosure required under U.S. Circular 230: Edwards Angell Palmer & Dodge LLP informs you that any tax advice contained in this communication, including any attachments, was not intended or written to be used, and cannot be used, for the purpose of avoiding federal tax related penalties, or promoting, marketing or recommending to another party any transaction or matter addressed herein.

ATTORNEY ADVERTISING: This publication may be considered "advertising material" under the rules of professional conduct governing attorneys in some states. The hiring of an attorney is an important decision that should not be based solely on advertisements. Prior results do not guarantee similar outcomes.

**EDWARDS  
ANGELL  
PALMER &  
DODGE**

eapdlaw.com