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LITIGATION, FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY, INVESTMENT FUNDS

CLIENT PUBLICATION

March 18, 2013

SEC Charges Asset Manager for Finder's Broker-Dealer Registration Failure

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On March 11, the SEC announced an unusual and technical enforcement case against a major asset management firm for paying finders' fees to a consultant solicitor who was not registered as a broker-dealer. Specifically, the SEC has issued an administrative cease-and-desist order in a settled case against investment manager Ranieri Partners and one of its former employees. *In the Matter of Ranieri Partners LLC & Donald W. Phillips*, SEC Admin. Proc. No. 3-15234 (Mar. 8, 2013) (Order Instituting Admin. & Cease-and-Desist Procs.)

The pertinent facts are as follows. In 2008, Ranieri Partners retained a consultant to find potential investors for two funds that were in the process of raising capital, Selene I and Selene II, and agreed to pay him a finder's fee of 1% of all capital commitments made to the funds by investors he introduced. The consultant was paid approximately $2.4 million and also reimbursed for travel and entertainment expenses. Pursuant to his agreement with the investment manager, the consultant solicited his institutional investor contacts to invest in Selene I and II; set up meetings to discuss the funds; provided due diligence materials about the funds; and provided information about other current and prospective investors and their capital commitments. The consultant, who was not registered as or associated with a broker-dealer, apparently provided copies of private placement memoranda ("PPMs") and subscription materials to investors. According to the SEC, through these activities, the consultant impermissibly engaged in the business of effecting transactions in securities without being registered as or associated with a broker-dealer. The SEC further asserted that Ranieri Partners failed to adequately oversee the consultant's activities by failing to limit his access to key documents and failing to monitor or limit his contact with investors.

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Ranieri Partners settled the SEC's charges by agreeing to cease-and-desist from committing or causing violations of the broker-dealer registration provisions (Section 15(a) of the Exchange Act) and agreeing to pay a $375,000 civil penalty. In addition, its former employee settled the matter by agreeing to cease-and-desist from committing or causing the same violations, agreeing to a nine-month industry supervisory suspension, and agreeing to pay a $75,000 penalty. The Commission noted that, in accepting Ranieri Partners' offer of settlement, it had taken into account the firm's remedial efforts, including its decision to forego using finders or marketers who were not registered as or associated with a broker-dealer.

While the SEC's case centers on an asset manager, in theory, the agency could bring similar charges against issuers who pay transaction-based compensation to solicitors. If this line of reasoning were to be applied to issuers, it would significantly expand those potentially exposed to this under-appreciated regulatory risk.

The SEC's unusual decision to charge an asset management firm for its consultant's receipt of transaction-based compensation without being registered as a broker-dealer should encourage asset managers to review their relationships with consultants or finders. The recent increase in technical cases the SEC has brought against asset managers further suggests that it would behoove asset managers to vet any other potential broker-dealer registration questions that may be embedded in their businesses.

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