

New SEC Program Discloses Information about Unregistered Soliciting Entities

The Securities and Exchange Commission ("SEC") has introduced a new program to inform the public about firms engaged in securities solicitations that have been the subject of investor complaints.¹ Through the program, *Public Alert: Unregistered Soliciting Entities* ("PAUSE"), the SEC will post on its Web site information about specific entities which claim to be registered with the SEC but in fact are not. On April 15, 2008, the SEC published the first list of entities (the "List"), which is available at www.sec.gov/investor/oiepauselist.htm.

Firms that are included on the List may not have committed any violations of the federal securities laws, but they have nevertheless been the subject of investor complaints. In addition, many firms on the List have names which are similar to those of other firms that are legitimately registered with the SEC.

Rationale for PAUSE

The SEC adopted PAUSE as a result of complaints regularly received from investors and foreign securities regulators about soliciting entities claiming to be registered, licensed, and/or operating in the United States. The SEC Staff has found that soliciting entities have increasingly engaged in false and misleading tactics to attract investors, including:

- impersonating U.S.-registered securities firms by using the same or a similar name, or providing an ad-

dress closely resembling that of a U.S.-registered firm;

- making false references to (including false claims of endorsement by) governmental agencies and international organizations; and
- claiming endorsements by, or making other references to, governmental agencies and international organizations that sound official, but do not exist.

In order to make investors aware of these tactics, the SEC will regularly post on the List the names of soliciting firms that have been the subject of complaints, along with a determination that either (1) there is no U.S.-registered securities firm by that name; or (2) there is a U.S.-registered securities firm by that name, but solicitations appear to have been made by individuals not affiliated with the U.S. registered securities firm. In addition, the List will include a "Comments" section that will contain additional information about the soliciting firm, such as the use of a name that is similar to that of a U.S.-registered securities firm, or any misleading references to governmental agencies or international organizations that the firm has made.

The SEC will not include the name of every firm about which it has received complaints (for example, the name of a firm that is being investigated by the SEC for possible securities law violations will not be posted on the List).

¹ *Public Alert: Unregistered Soliciting Entities ("PAUSE") Program*, SEC Release No. 34-56534 (September 26, 2007).

SEC Focus on Finders

In the List, the SEC cautions investors that a firm's appearance does not mean it has committed any securities law violations, nor does it mean that the SEC has made any judgment about the merits of the securities being offered by that firm.

However, the SEC's adoption of PAUSE does suggest increasing regulatory scrutiny of firms engaged in securities solicitations. This scrutiny has extended to unregistered "finders"² and other promoters of securities transactions, as shown by the recent amendments to Form D under the Securities Act of 1933 which require issuers to provide information about any recipients of direct or indirect cash compensation—including unregistered finders—in connection with the sale of securities in private placement transactions.³ Given the SEC's increasing focus in this area, both issuers and soliciting firms involved in offerings of hedge funds and other privately placed investment vehicles may wish to re-evaluate the application of the

² "Finders" are firms that introduce potential buyers and sellers of securities. Depending on their activities, some finders are not required to register with the SEC as "brokers" under Section 15(a) of the Securities Exchange Act of 1934 (the "Act"). Typically, the SEC distinguishes finders from brokers on the basis of the fees charged, the services provided, and the identity and history of the parties to a transaction or transactions. However, the differences between finders and brokers, and therefore whether a firm is required to register as a broker, are not always clear.

³ *SEC Adopts Amendments to Form D and Mandates Electronic Filing*, Dechert OnPoint (March 2008), at fn.3.

broker registration requirements to the entities that are engaged in securities solicitations.

Prior Notification to Firms; List Updates

Prior to being included in the List, a firm will be notified by the SEC Staff and provided with an opportunity to respond within two business days of the notification letter. Soliciting firms that believe they have been mistakenly included on the List should notify the SEC Staff and provide documentation showing that the firm has been erroneously included.

The SEC plans to update the List regularly, archiving information when nine months since the last observed activity with respect to a soliciting firm has passed.

Conclusion

Firms engaged in securities solicitations should periodically consult the List to determine whether their name or a similar name appears. We will monitor and alert you on any further developments.



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