

## >>>FAIRVIEW FLASH REPORT<<<

### FINRA “Capital Acquisition Broker” Rules to Simplify Requirements for Private Equity or Hedge Fund Managers to Register as Broker-Dealers

#### WHAT HAPPENED?

Private equity managers and their associated persons of the issuer may trigger broker dealer registration if they receive transaction fees directly or indirectly through the acquisition or disposition of portfolio companies or participate in more than one securities offering during a 12-month period. On August 18, 2016, the SEC approved new FINRA rules regarding the registration and regulation of "capital acquisition brokers" (CABs) that choose to be subjugated to the "broker dealer-lite" rules (CAB Rules) in lieu of full broker-dealer registration.

Registration as a CAB could be advantageous for registered investment advisers who have employees performing certain marketing activities for private funds, including: private equity fund portfolio transactions, marketing certain private placements to institutional investors, using private placements of the private fund's interest to raise capital, and consulting companies on M&A and corporate restructuring transactions.

The purpose of the CAB Rules is to streamline the registration for firms and simplify compliance burdens. The CAB Rule 016 defines a CAB as any broker that is compensated for one or more of the following activities:

- Advising issuers and private funds about capital raising activities;
- Advising companies on the selection of an investment banker, corporate restructuring, or the purchase or sale of a business or assets;
- Helping prepare offering materials;
- Providing negotiation and structuring services, expert testimony, litigation support, valuation services, and fairness opinions;
- Influencing a privately-owned company's disposition to a buyer that intends to operate the company; and
- Acting, soliciting, identifying, or qualifying as a finder or placement agent for the sale of unregistered securities to institutional investors.

<p><b>WHAT ARE THE IMPLICATIONS?</b></p>	<p>The CAB Rules will be similar yet more manageable than FINRA rules for registered investment advisers managing private equities and hedge fund managers through the following provisions:</p> <ul style="list-style-type: none"> <li>• Exempting CABs from FINRA's fair pricing rules;</li> <li>• Simplifying the prohibition on false and misleading statements in advertising;</li> <li>• Exempting CABs from holding annual compliance meetings, reviewing and investigating transactions, retaining certain documentation and supervisory procedures, and directing internal investigations;</li> <li>• Exempting CABs from the supervisory certification rule, the business continuity plan rule, and the business continuity and disaster recovery testing rule; and</li> <li>• Requiring a written anti-money laundering program that tests compliance every two years.</li> </ul>
<p><b>WHAT DOES THIS MEAN FOR ME?</b></p>	<p>Fairview encourages all registered investment advisers managing private funds to review their business practices and determine if the CAB Rules should be incorporated into their firm's compliance program. Registered investment advisers should be especially observant of its applicability if they (i) currently compensate individuals for raising capital towards their private funds or (ii) charge transaction based fees from portfolio companies.</p> <p>The CAB Rules will become effective on April 14, 2017. FINRA will accept applications for CAB registration starting on January 3, 2017. Please contact Fairview with any additional questions or concerns.</p>

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Sources: [FINRA "Capital Acquisition Broker" Rules are a Solution for Private Equity and Hedge Funds and Private Investment Banking/M&A](#)