

Registered Placement Agents versus “Finders”



THOMAS CAPITAL GROUP

Member FINRA & SIPC

Contents

- ▶ Placement Agents – Some Background
- ▶ Placement Agent Fundraising Process
- ▶ Placement Agents versus “Finders”
- ▶ Other Considerations
- ▶ Appendix – Thomas Capital Group, Inc. Regulatory Framework

Placement Agents – Some Background

- ▶ Placements agents are external marketers for money managers of all types, domestic, foreign, and emerging markets including: private equity, real estate, venture capital, and hedge funds
- ▶ There are tens of thousands of money managers and fund managers, of which most are too small to afford a marketing staff and therefore are totally dependant on placement agents
- ▶ These specialized investment managers add diversification and incremental returns to large investment portfolios; many of them are minority owned
- ▶ The Placement Agents industry has evolved over the last 25-30 years, simultaneous with the emergence and rapid expansion of alternative fund managers and the institutional interest in such managers
- ▶ Dow Jones publications list 80 of the more established placement agents, all of which are believed to be registered with and regulated by FINRA and/or other regulatory authorities
- ▶ These placement agents range from specialized divisions of large brokerage firms to small and mid-sized independent firms that are only in the placement business
- ▶ Legitimate placement agents
 - are not “finders” or “lobbyists” who capitalize on political contacts and/or contributions
 - are regulated by the SEC, FINRA and/or other Federal, State and international agencies and authorities
 - do not solicit politicians for investment commitments from public or other funds; they work only with the professional investment staffs of the various institutional investors

Placement Agents – Some Background (cont.)

- ▶ Placement agents have a much broader reach than most managers could achieve without a large internal sales force
- ▶ Alternative fund managers often enter the market only every 3-5 years; unless they are very large and in the market on a constant basis, they can't afford or justify a full time marketing staff
- ▶ Prospective investors, investment staffs and investment interests change often, making it difficult for many fund managers to keep track of and maintain contact
- ▶ Globally, there are over 2,000 large institutional investors including public, private and union pension funds, sovereign wealth funds, endowments and foundations, banks and insurance companies, another 1,000 or so large family offices and fund of fund managers, and hundreds of consultants and advisors located throughout the world
- ▶ Many institutional investors have come to rely on and have a level of confidence in the vetting, due diligence and preparation work done by professional placement agents
- ▶ **Placement agents are an effective and efficient way for fund managers to reach interested investors, allowing the managers to devote more time to managing their funds and less time spent on fundraising**

Typical Placement Agent Fundraising Service



- Systematic due diligence process focused on identifying private equity firms generating superior returns
 - Review hundreds of partnerships annually and conduct on-site visits with managers
 - Comprehensive analysis and evaluation of GP teams, investment strategy, and track record
 - Complete portfolio company and LP reference checks and conduct GP background checks
 - Manage the demand assessment process
-
- Pre-market and target high-value investors
 - Develop appropriate fund positioning
 - Provide ongoing advice on fund structure, terms, and strategic positioning of the fund
 - Assist in preparation of marketing materials, including PPM, “pitch book” and due diligence questionnaire
 - Manage due diligence data room
-
- Develop ancillary data and market intelligence for sales team and LP dissemination
 - Develop a strategic marketing plan by identifying investors with specific interest in the investment strategy
 - Pre-qualify/source optimal mix of LPs
 - Schedule meetings, manage meeting calendar, prepare pre-meeting investor profiles and attend LP meetings
-
- Prepare regular sales status reports and conduct update meetings with GP
 - Gather feedback from LPs and discuss potential next steps
 - Manage communication and information needs of LPs
 - Coordinate with the GP to respond to investor questionnaires and follow-up inquiries
-
- Facilitate timely information dissemination
 - Advise on modification of terms for certain investors
 - Aggregate investor commitments and advise on the timing of closings

Placement Agents vs. “Finders”

Experience of Professionals

Value-Added Placement Agents

- Relevant private equity buy-side and sell-side industry experience
- Substantial and timely understanding of broad market and individual LP interests
- Knowledge of the ever-changing landscape of LPs and staff
- Prior relationships necessary to efficiently introduce opportunities and optimize the fundraising process for both GPs and LPs

Finders

- History of working in or around state and/or local government
- Generally lack alternative asset or even general investment experience
- Select contacts at highest ranks of decision-making bodies

Due Diligence Process

- Conduct through due diligence on the fund, principals, track record, strategy, etc.
- Due diligence consistent with that performed by LPs
- Based on diligence findings, engage only a select few of the hundreds of funds reviewed annually

- Do not perform thorough due diligence and, in many cases, perform no due diligence

Placement Agents vs. “Finders”

	Value-Added Placement Agents	Finders
Nature of LP Introductions	<ul style="list-style-type: none">• Maintain global relationships with numerous LPs• Interact with LPs' investment staff members who have experience evaluating private equity funds• Ensure LP staff has relevant information to make their own fiduciary decision• Operate within the legal and regulatory terms and conditions of a formal contract	<ul style="list-style-type: none">• Seek commitments from a narrow group of LPs, often a single relationship• Often bypass investment staff and focus introductions at board or trustee levels• Some historically have insinuated or promised to LPs incentives beyond the fund performance• Generally operate without the legal and regulatory constraints and conditions of a formal contract, potentially exposing the issuer and the offering to, among other things, loss of certain regulatory exemptions
Fundraising Preparation	<ul style="list-style-type: none">• Assist GPs and LPs to align interests through market partnership terms and conditions, forming the basis of a successful long-term partnership• Help construct and vet high-quality, well-prepared offering materials	<ul style="list-style-type: none">• Typically do not provide advice or assistance with preparation of offering materials, including economic terms
Regulatory Framework	<ul style="list-style-type: none">• SEC-registered broker dealers; regulated by FINRA• Professionals registered according to their sales and supervisory responsibilities (e.g. Series 7, 63 and 24 licenses)• Culture committed to legal, ethical and regulatory compliance, including limitations on ability to make gifts and restrictions on political donations	<ul style="list-style-type: none">• Most are not regulated by the SEC or FINRA• Culture generally based on “political” approach to LP introductions

Problems With Using Unregistered Broker-Dealer

The consequences of using an unregistered broker-dealer can be serious. Under the Securities Exchange Act, every person who is engaged in the business of offering transactions in securities is required to register with the SEC as a broker-dealer and every contract made in violation of any provision of the Act is void. This means if an unregistered broker-dealer is used, purchasers may have a right to rescind their purchases until expiration of the statute of limitations, which is the later of three years from the date of violation or one year from the date of discovery of the violation. Issuers also expose themselves to civil and criminal penalties for using an unregistered broker-dealer. Even if a finder is not required to register as a broker-dealer^(a), issuers need to carefully monitor the finder's activities to ensure the finder does not void the issuer's exemption from registering the securities being offered. This can occur if the finder approaches non-accredited investors or undertakes a general solicitation of potential investors.

- (a) Conventional wisdom is that one who does nothing more than provide the name and phone number of a potential purchaser would be a finder and not be required to register under federal law. Any activity beyond that can raise issues associated with using an unregistered broker-dealer. Factors the SEC considers in determining whether someone is a broker-dealer or a finder include:
- ▶ *Receipt of transaction-based compensation* - A person who receives transaction-based compensation in connection with a securities transaction is almost always deemed to be a broker-dealer.
 - ▶ *Negotiation or advice* - A financial intermediary involved in negotiations or who provides detailed information or advice to a buyer or seller of securities is likely to be deemed a broker-dealer.
 - ▶ *Solicitation of investors* - Solicitation is a factor that weighs in favor of finding a person to be a broker-dealer.
 - ▶ *Previous securities sales experience or disciplinary action* - Previous experience selling securities and/or discipline for violations of securities laws indicate that regulators will consider a person a broker-dealer.

Thomas Capital Group, Inc. Regulatory Framework

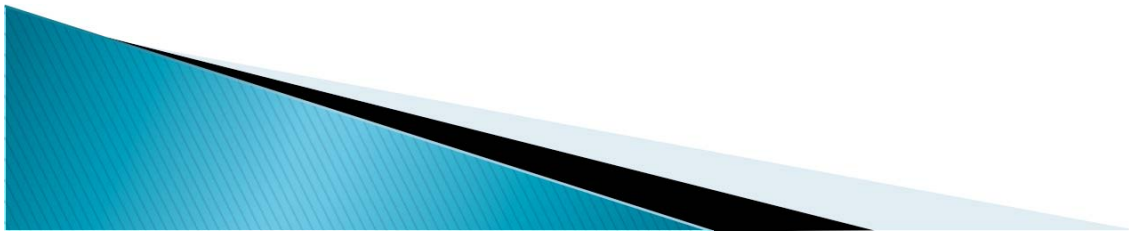


THOMAS CAPITAL GROUP

Member FINRA & SIPC

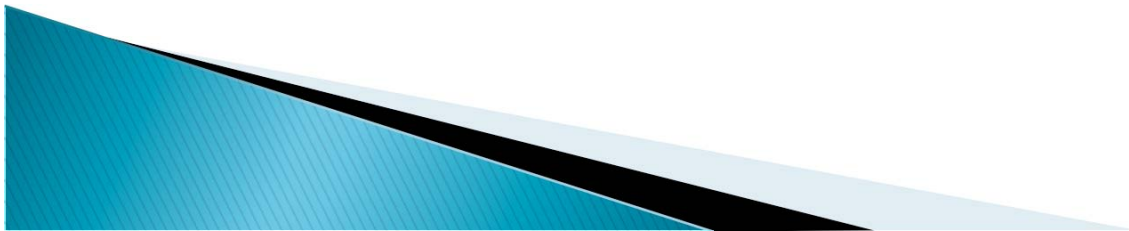
Thomas Capital Group, Inc.

- ▶ Thomas Capital Group, Inc. (“TCG” or “the Firm”) is a registered broker-dealer and a member of and registered with FINRA.
- ▶ TCG introduces private equity fund offerings to qualified institutional investors including trusts, endowments, corporate and public pension plans, and family offices.
- ▶ The Firm’s professionals are registered representatives and hold a number of FINRA securities licenses including Series 7, 63, 24, and 27, all of which require FINRA required continuing education.



Securities Licensing

- ▶ Series 7 General Securities Representative - qualifies a representative for the solicitation, purchase, and/or sale of all securities products, including corporate securities, municipal securities, municipal fund securities, options, direct participation programs, investment company products, and variable contracts.
- ▶ Series 24 General Securities Principal - qualifies a representative as a general securities principal in order to manage or supervise the member's investment banking or securities business for corporate securities, direct participation programs, and investment company products/variable contracts.
- ▶ Series 63 Uniform Securities Agent State Law – qualifies representatives as securities agents and covers the principles of state securities regulation reflected in the Uniform Securities Act.
- ▶ Series 27 Financial and Operations Principal - covers knowledge and understanding of financial responsibility rules and recordkeeping requirements.



FINRA

- ▶ FINRA (formerly the NASD) operates as the largest, non-governmental securities industry self-regulatory body (“SRO”), and comprises the consolidation of NASD and NYSE Member Regulation.
- ▶ An SRO is a membership-based organization that creates and enforces rules for members based on the federal securities laws. The SEC oversees FINRA.
- ▶ Broker-dealers are bound by all of the FINRA rules and reporting requirements. The SEC approves such rules.
- ▶ FINRA conducts the regulatory oversight of more than 5,000 securities firms and 666,000 registered representatives.

