

CLIENT ALERT

SEC Sends Message to Stop Fundraising by Unregistered "Finders"; comes Down Hard on Fund Sponsor and Managing Partner

Mar.12.2013

An [SEC settlement announced yesterday](#) sounds a loud message to "finders" and those who use their services. Ranieri Partners LLC, a manager of a number of real estate investment funds, used the services of William Stephens, a person barred from association with any investment advisor, to locate investors for its funds. Stephens and his agent solicited \$569 million in capital contributions for various Ranieri funds. Although Stephens was not permitted to send out offering materials, Ranieri Partners did not limit his access to such materials. The then Senior Managing Partner of Ranieri, Donald Phillips, provided Stephens with private placement memoranda, subscription documents and due diligence materials, which Stephens transmitted to potential investors and spoke with those persons about the funds. Ranieri Partners and Phillips thus aided and abetted Stephens' illegal conduct.

Although the Securities Exchange Act of 1934 (the "Exchange Act") requires persons engaged in the business of effecting transactions in securities to register as brokers, Stephens was not registered. The SEC alleged that Stephens' failure to register diminished the protection that should have been afforded to investors because there was no supervision of his finder activities to ensure that they did not violate the law. The SEC also alleged that Ranieri Partners and Phillips ignored Stephens' lack of registration.

In addition to its reputational harm, Ranieri Partners settled the SEC charges with payment of a civil money penalty of \$375,000. Phillips, who no longer is with Ranieri, was suspended in a supervisory capacity for nine months and agreed to pay a civil monetary penalty of \$75,000. Stephens agreed to be barred from the securities industry. The SEC's orders require each of them to cease-and-desist from further violations of Section 15(a) of the Exchange Act, which requires people acting as brokers to be registered with the SEC.

This case serves as a powerful reminder that the SEC can and will pursue unregistered finders, as well as those funds and their principals that utilize the services of unregistered finders. Fund sponsors should also be mindful of the rescission rights afforded investors under Section 29(b) of the Exchange Act. Section 29(b) in essence gives investors a right to "put" the investment back to the fund sponsor, providing that "every contract made in violation of any provision of [the Exchange Act] or of any rule or regulation thereunder, and every contract . . . made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of [the Exchange Act] or any rule or regulation thereunder, shall be void . . . as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract"

Investment advisors should also be aware that compliance with the requirements of SEC Rule 206(4)-3 under the Investment Advisers Act of 1940, as amended, regarding the use of solicitors does not protect them when the finder/solicitor is promoting sales of securities, rather than advisory services.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.