MARINO PARTNERS LLP

Marino Market Minutes

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I Can't Drive 55

By: Paul Marino

As the summer starts to wind-down and travel baseball is *almost* over (some, like my wife and many of her friends, would say: FINALLY), I cannot help think about the number of hours I have logged in my car driving to and from tournaments and games. While I logged all this windshield time, I have come to the conclusion that I can't drive 55 (neither could Sammy Hagar) and neither can most of you (as my father would say, "why should you be any different"?). In reality, if you travel on any highway, parkway, thoroughfare, expressway, freeway (you get the picture), most people (and by that, I mean about 95% of people) do not drive the speed limit; which by extension means most people break the law. Now it's incontrovertible that driving about 10-15 miles over the speed-limit is both benign and accepted. It is benign because the speed limit came about when most cars had drum-brakes, seat belts were things that were clipped into the ceiling above your head and to turn-on your high-beams you stepped on a button on the floor board near the brake as opposed to today where most new cars (at a minimum) have airbags, anti-lock brakes and anti-collision, lane drifting, etc., software that often self-corrects the driver. It is accepted because this act of civil disobedience is ignored by both the legislature and executive branches and of course by John Q. Public, who refuse to drive 55. To the foregoing, I posit "N/G" (not good). Why, you ask? For starters, why have a law if it's not going to be enforced? A law that isn't enforced creates confusion and forces the executive branch (*i.e.*, law enforcement) to determine if it's a "good law". As an example, if everyone who drove more than 55 miles per hour was pulled over and ticketed by the state police, two things would occur: 1. The police would become overnight pariahs (and would likely stop enforcing it [let's face it, no one wants to be a pariah]) and 2. the citizenry would protest to such an extent that the legislature would undoubtedly increase the speed limit to 65 or 75 miles per hour. Instead, however, we play this game of cat and mouse where as a driver we more or less know that if you do at or below 70 mph police will not likely ticket you; **however**, what happens when revenue in the state or local municipality is down? Then if you do 60 you might get a ticket. What about if an officer is having a bad day and *decides* to enforce the law, or worse doesn't like the way the car looks because it's too "tricked out", *etc.* and uses the law (which went previously unenforced) as a pretext to pull over the driver? In sum, having a law that is arbitrarily enforced or subject to enforcement by an individual (or law enforcement entity), is detrimental to a democracy for a simple reason: it diminishes the importance of the legislature to the point that the legislature can abandon their purpose of passing well thought and generally beneficial laws and just create legislation to please their constituency - even if the legislatures have no expectation of such law being enforced. Further, it also erodes the rule of law because the citizens start to decide what laws they should obey. The foregoing narrative impairs our (that is, the voting public's) ability to hold our representatives accountable for so many arcane and byzantine laws and puts the power of enforcement or non-enforcement in the hands of (mostly) unelected officials, even if they are sworn to uphold the law (or at least uphold the laws that s/he deem are good).[1]

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What, you say? It doesn't matter because you don't break any "big law" and if you broke a law it is likely one that you didn't know existed so you should not get in trouble? Well, as any first-year law student will tell you: ignorance of the law is no excuse: "every man is presumed to know the law".[2]

[1] Great story on the ever-expanding number of laws. https://www.usatoday.com/story/opinion/2015/03/29/crime-law-criminal-unfair-column/70630978/

[2] Great story on how too many byzantine laws are hurting the innocents. http://www.heritage.org/crime-and-justice/commentary/too-many-laws-turn-innocents-criminals

Lastly, as one of the greatest minds of the American Enlightenment Age wrote (first person who can identify the author to me in an email [pmarino@marinollp.com] wins the no-prize):

> "There is danger from all men. The only maxim of a free government ought to be to trust no man living with power to endanger the public liberty.
>
> "For as in absolute governments the King is law, so in free countries the law ought to be king; and there ought to be no other. '… a government of laws and not of men.'"

* * * * * *

I Need a Hero!

I'm holding out for a hero 'til the end of the night; He's gotta be strong; he's got have good returns, his NAV has got to be out of sight. Probably not what Bonnie Tyler had in mind but it's pretty clear that the hedge fund industry is looking for a hero—could that hero be Steve Cohen? The SEC sure hopes not - but if SAC can come back and put points on the board, it might breathe life into what appears to be a fairly beaten down industry.

To that extent, judging by the amount of new funds being launched by larger funds and the fact that many mainstream publications (*see*, Barrons, Indexing and the Rise of a New Nifty 50—*need a subscription to read) are beginning to recognize that the passive investment phenomenon will eventually lead to a return to active stock pickers means that actively managed funds will likely have a revival; the question is: to what extent and at what price? Will computers replace managers on a trading floor in NYC like robots did to autoworkers in Detroit? Perhaps, but when everything seems logical and order flow is following the "book" here comes the unexpected variable who zigs when everyone else's algo tells them to zag—and that guy/gal will make the money.

It's official: cryptocurrencies have replaced Pokémon Go as the hottest new-thing (joke). I am not sure how many readers follow cryptocurrency but if you don't you should. Not that I'm advocating (I AM NOT) buying cryptocurrency but I do believe the underlying blockchain construct will change the nature of how we transact and could (and likely, will) lead to the end of town hall record keeping, deeds, transfer documents, and written contracts as we know them; it is groundbreaking. While it's not fully understood how blockchain will be implemented, rest assured it may cause a number of disruptions in century old systems. Stay tuned.

Thank you to Rachel Marino for 17 great years of marriage!

Congratulations to Chloe Marino on turning 7!

Congratulations to Jill and Lou Sala on their marriage!!!!

Enjoy the rest of your summer ☺

Series 79 - Investment Banker Limited Representative

By: Alexandra Lyras

Investment bankers need to be registered with FINRA to do deals. The type of license an investment banker needs depends on the type of activities he or she will engage in and the type of offering being made.

The Series 7 (General Securities Representative) covers a broad range of retail securities activities such as retail customer solicitation and sales, and trading, as well as investment banking activities such as advising on and facilitating the marketing of an offering. Prior to 2009, any investment banker wanting to collect a fee or commission on a deal needed to pass the Series 7 even if he or she was only doing investment banking activities. In an effort to create a more role specific license, in 2009, the SEC and FINRA discontinued requiring investment bankers to take the broader Series 7 and instead introduced the Series 79, which focuses on mergers and acquisitions, buyouts, financial restructuring, public investment banking and refinancing.

NASD Rule 1032(i)(1) provides that the following two main areas of activities would require a Series 79:

Advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings.

Advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.

Rule 1032 (i)(2) states that the Series 79 is not required for advisors for which participation in the above activities is limited to:

Advising on or facilitating the placement of direct participation program securities as defined in Rule 1022(e)(2); these are securities associated with programs that provide for flow-through tax consequences such as oil and gas programs, cattle programs, condominium securities, Subchapter S corporate offerings and other programs.

Effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3 (b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, provided, however, that such person shall not effect sales of municipal or government securities, or equity interests in or the debt of direct participation programs as defined in Rule 1022 (e)(2).

Retail or institutional sales and trading activities.

There are also some exceptions to these licensing requirements, for example, if an employee's participation in investment banking activities is very limited or if a new employee rotates among different departments for training purposes, in which case such employee will be given a six-month grace period from when he or she began participating in such investment banking activities.

If a representative participates in any other activities, he or she should be certain to explore whether any other licenses are required to comply with FINRA/SEC guidelines. Failure to obtain the proper license subjects brokers, advisors, and bankers to liability for transactions and commissions later voided by the SEC on the grounds of unlicensed dealing. Sellers going through unlicensed intermediaries can also be liable for aiding and abetting fraudulent securities sales.

Amended Form ADV: Umbrella Registration

By Caitlin Harrison

Beginning on October 1, 2017, investment advisers must comply with and utilize the amended Form ADV (the "**Amended Form ADV**") that was adopted by the Securities and Exchange Commission (the "**SEC**") on August 25, 2016. Practically speaking, this means that advisers with a fiscal year end of December will need to use and comply with the amended Form ADV no later than their annual update in March of 2018.

This article is a series of three that will discuss the most noteworthy changes to the Form ADV, including (1) additional reporting requirements for separately managed accounts ("**SMAs**"), (2) additional disclosures about investment advisers and their business, and (3) incorporating a method for multiple private fund advisers entities operating a single advisory business to register using a single form ADV ("**Umbrella Registration**")

Umbrella Registration

Before this amendment, advisers to private funds that organized, for various tax, legal and regulatory reasons, as separate legal entities but effectively operated a single advisory business were required to register on multiple Form ADVs. Because the related advisors appeared both to investors and regulators as a single advisory business, the multiple registration forms were both inefficient and confusing to those seeking to obtain public information on the adviser.

The Amended Form ADV codifies prior SEC guidance issued in 2012 that permitted an investment advisor (the "**Filing Adviser**" or "**FA**") to file a single Form ADV for both itself and for one or more other investment advisors (the "**Relying Advisor(s)**" or "**RA**") if the FA and each RA are under common control and conduct a single advisory business that involves private funds.[1]

In addition to the requirement that each RA must independent qualify for SEC registration, the instructions to the Amended Form ADV[2] list five (5) conditions which must be satisfied in order for an advisor to utilize Umbrella Registration. The conditions are designed to limit eligibility to groups of private fund advisers that operate a single advisory business through multiple legal entities. [3]

1. The FA and each RA advise only
    a. private funds; and
    b. clients in SMAs that are (i) qualified clients, (ii) are otherwise eligible to invest in the private funds advised by the FA or an RA and (iii) whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds.
2. The FA has its principal office and place of business in the United States and all of the substantial provisions of the Investment Advisors Act of 1940, as amended (the "**Advisors Act**") and the rules thereunder apply to the FA and each RA.
3. Each RA, its employees and the persons acting on its behalf are subject to the FA's supervision and control and are each thus "persons associated with" the FA.
4. The advisory activities of each RA are subject the Advisers Act and each RA is subject to examination by the SEC.
5. The FA and each RA operate under a single code of ethics that complies with SEC rule 204A-1 and a single set of written policies and procedures that comply with SEC rule 206(4)-7 and administered by a single chief compliance officer in accordance with that rule.

Condition 1 clearly states that the only eligible entities for Umbrella Registration are groups of private fund advisors operating a single advisory business. Conditions 2 and 4 were imposed to guarantee that the SEC would readily have access to the filings of the FA and each RA and ensure that the Advisors Act applied to each entity under the Umbrella Registration. Conditions 3 and 5 ensure that the FA and each RA are subjected to a single unified compliance program.

It should be noted that Umbrella Registration is not available to exempt reporting advisers or groups of related entities that do not serve as adviser to private funds.

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Amended Form ADV and Schedule R

If all of the above conditions are satisfied, the FA and the RA may file a single Form ADV that includes all of the information and disclosures required under the Advisers Act applicable to both the FA and each RA. The instructions make it clear that all information provided on the Amended Form ADV should be completed on behalf of both the FA and any RA, unless otherwise indicated.

Four (4) items in Part 1A of the Amended Form ADV are now indicated as applying only to the FA: Item 1 Identifying Information, Item 2 SEC registration, Item 3 Form of Organization and Item 10 Control Persons. Thus, when filling out the Amended Form ADV, the preparer should complete these sections only on behalf of the FA, but all other sections in the Amended Form ADV should reflect both the FA and each RA, including Item 11 Disclosure Information.

The preparer will now fill out and file a new Schedule R on behalf of each RA, which contains each of the sections listed above. In the event that a registered FA wishes to add or delete an RA from Umbrella Registration, this update should be effectuated by filing an other-than-annual amendment and the corresponding Schedule R should be added or deleted as needed.

Further, an RA should not be indicated as an "other investment adviser" in Item 7.A. nor do you have to complete Section 7.A in Schedule D for an RA. Instead, this information will be included on the Schedule R of each RA. Lastly, in Section 7.B.(1) of Schedule D, the filer must indicate whether the FA and/or an RA is the sponsor or manager of the private fund.

1 https://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm
2 https://www.sec.gov/rules/final/2016/ia-4509-form-adv-summary-of-changes.pdf
3 https://www.sec.gov/rules/final/2016/ia-4509.pdf

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