SEC Continues Crackdown on Unregistered Broker-Dealers

6/15/2015 by David Jenson | Stinson Leonard Street - Dodd-Frank and the Jobs Act

A New York man has agreed to pay almost $4.5 million to settle charges by the SEC that he violated Section 15(a) of the Exchange Act by acting as an unregistered broker-dealer. According to the SEC, starting in 2010 Joshua A. Yudell entered into numerous arrangements that he marketed to securities owners as a "private shareholder secondary offering." Pursuant to a written agreement, the securities owners (usually of stocks with very low market capitalization) would cause their securities to be re-registered in the name of a Yudell-controlled entity. Yudell would then deposit* the securities into a brokerage account with a registered broker-dealer and attempt to sell the securities into the market at or above agreed upon price floors. Yudell would then return the proceeds to his customer after deducting his fee, which ranged from 10% to 35%. Yudell also created receipts representing the trades and provided the receipts to his customers. Yudell is alleged to have engaged in at least 88 of these transactions through a number of different companies that he was using as alter egos. Over the course of these transactions, Yudell was never registered as a broker-dealer or as a registered representative of a broker-dealer, and none of his alter ego companies were registered as broker dealers. As such, the SEC claimed that Yudell's conduct violated Section 15(a)(1) of the Exchange Act.

**Curiously, the SEC's complaint notes that Yudell would "attempt to deposit," perhaps indicating that in some cases the registered broker-dealer refused to participate in the arrangement. The SEC has not provided any information with respect to the registered broker-dealer(s) used by Yudell.*

The Yudell settlement fits within a broad pattern of increased attention by the SEC to the activities of those acting as unregistered broker-dealers. In an April 2013 speech, David Blass cautioned investment advisers to private funds to carefully examine their practices to determine whether they ought to be registered as broker-dealers, an area of compliance (and enforcement) that had largely been overlooked prior to the passage of the Dodd-Frank Act and the changes that it brought to the investment adviser registration regime. Although we have not seen any high profile cases against private fund advisers for violations of Section 15(a), the SEC has highlighted its increased focus on unregistered broker-dealer activity in several enforcement actions against individuals. On May 16, 2014, an individual agreed to pay more than $22 million to settle an enforcement action for violations of Section 15(a), and on March 26, 2015, the SEC settled an action against 22 parties relating to Section 15(a) violations, resulting in over $6 million in penalties. The Yudell settlement continues the trend of the SEC highlighting cases in which the penalties are high and there is no allegation of fraud by any of the parties involved. The message seems to be that the SEC will not be taking a "no harm no foul" approach to broker-dealer enforcement actions.

Not all of the SEC's actions in the area of broker-dealer registration and enforcement in the past couple of years have adhered to a strict interpretation of Section 15(a); in a January 31, 2014 no-action letter, the SEC provided assurance that it would not take enforcement action against an M&A broker, providing some clarity in a historically gray area of broker-dealer enforcement.

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