

October 19, 2018

Clarifying the Single Issuer Exemption for Broker-Dealers

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On September 20th, the SEC released a proposed rule amending Rule 17a-5 of the Securities Exchange Act of 1934, as amended (“*Exchange Act*”). [1] Under Rule 17a-5(d)(1)(i)(C) of the Exchange Act, broker-dealers registered with the SEC generally must file an annual report that includes financial reports audited by an independent public accountant registered with the Public Company Accounting Oversight Board.[2] However, the SEC may exempt certain broker-dealers from the audit requirement where it determines an exemption is consistent with investor protection and public interest.[3] Under the proposed Rule 17a-5, the audit requirement would not apply where a broker-dealer’s business is “limited to acting as broker (agent) for a *single* issuer in soliciting subscriptions for securities of *that* issuer...” (emphasis added)[4] The SEC believes the exemption is appropriate because, under these circumstances, the issuer can likely access and evaluate a great deal of financial information about the broker-dealer.[5] In fact, the broker-dealer is usually an affiliate of the issuer. Therefore, an audit by an independent public accountant does not provide a “meaningful benefit” to the issuer or investors.[6] We agree and believe the proposed rule will be particularly helpful to private funds and their investment advisers, some of which have created broker-dealers for the express purpose of selling fund shares. The deadline for submitting comments on the proposed rule is October 29th. If you are interested in submitting a comment or have any questions on the effect of the proposed rule, please feel free to contact us. **Lauren Jackson** is counsel and **John I. Sanders** and **Lauren Henderson** are associates based in the firm’s Winston-Salem office. [1] SEC, *Proposed Rule: Amendment to Single Issuer Exemption for Broker-Dealers*, Release No. 34-84225 (Sept. 2018), available at <https://www.sec.gov/rules/proposed/2018/34-84225.pdf>. [2] 17 C.F.R. 240.17a-5(d)(1)(i)(C). [3] Exchange Act §17(e)(1)(C). [4] SEC, *supra* note 1 [5] *Id.* [6] *Id.*