

Outsourcing Your Securities  
Compliance to a Broker-Dealer:  
Navigating the Reg D Securities  
Offering Gauntlet

By Justine Tobin, *Tobin & Company*



Justine Tobin, who has a 40-year career in the securities industry, founded Tobin & Company, which provides a range of investment banking services. Tobin & Company has served as a Managing Broker-Dealer (MBD) for private placement offerings for more than twelve years, bringing a wealth of experience in regulatory compliance and distribution support to sponsors creating QOF, DST and other offerings for their investors. When you engage TOBIN as your Managing Broker Dealer for your private placement offering, you can outsource significant compliance obligations, duties and tasks, including those related to the investor subscription process and due diligence, the management and compensation of your internal sales representatives and the management and compensation of your outside distribution network.

## Your Managing Broker Dealer plays a critical role in the successful execution of your private securities offering.

### The key responsibilities of a Managing Broker-Dealer

#### 1. Regulatory Compliance and Oversight:

**FINRA and SEC Compliance:** The MBD ensures that all aspects of the fund's securities offering comply with the rules and regulations set forth by the Financial Industry Regulatory Authority (FINRA) and the U.S. Securities and Exchange Commission (SEC). This includes adherence to proper disclosures, suitability standards and advertising regulations to protect investors.

**Due Diligence:** The MBD conducts thorough due diligence on the fund's offering, the underlying real estate project or business and the investment structure. This process ensures that the fund is a legitimate, high-quality investment vehicle for potential investors and helps mitigate risks of misrepresentation or fraud. Your MBD may even recommend a third-party due diligence partner to supplement its own internal processes.

**KYC Requirements:** The MBD implements and monitors customer identification and anti-money laundering compliance programs to ensure that the fund and its investors are compliant with all relevant laws, particularly those concerning the sourcing of investor funds and protections against terrorism.

#### 2. Managing the Reg D Securities Sales Process:

**Selling Agreements:** The Managing BD establishes agreements with other broker-dealers to form a distribution network for the sale of the fund's securities. This syndicate of broker-dealers will introduce the investment to their customers and help raise capital for the fund.

**Due Diligence Cooperation:** Managing Broker-Dealers such as TOBIN share their internal due diligence with other broker-dealers to support them in their required due diligence processes. Not all MBDs provide this support, but TOBIN has always believed in cooperation rather than competition among fellow MBDs and selling group members.

**Supervision of Sales Agents:** Your MBD supervises the activities of sales agents involved in selling the private Reg D securities, ensuring that they adhere to regulatory standards and

follow proper procedures when dealing with investors. This includes oversight of how Reg D securities are marketed and sold to ensure that all activities are conducted transparently and in the investors' best interest. TOBIN supports direct selling by issuers and through both commissioned and non-commissioned sales reps. Tobin & Co. also helps build out an external sales force with its strong relationships and friendships throughout the broker-dealer and RIA community.

**Investor Suitability:** Managing Broker Dealers ensure that your securities are only sold to suitable investors, typically accredited or sophisticated investors. This requires evaluating each investor's financial status, risk tolerance and investment goals to ensure that the investment vehicle is an appropriate fit for their portfolio. TOBIN provides this service for all investors, whether inside or outside the issuer's captive sales force.

### **3. Marketing and Distribution Support:**

**Investor Education:** The MBD often helps design marketing materials and presentations for potential investors and broker-dealers. These materials must be accurate and clear, and must comply with U.S. regulatory standards to ensure that investors fully understand the risks and potential benefits of investing in the non-correlated investment. TOBIN reviews and approves each marketing presentation and sales piece, even investor email messages, to ensure that they comply with FINRA rules and communicate appropriately to investors.

**Coordinating Investor Communications:** The MBD facilitates communications between the issuer and the selling broker-dealers, ensuring that any investor questions, concerns or requests for additional information are addressed in a timely and compliant manner.

**Offering Documentation:** Your Managing Dealer ensures that the offering documents (private placement memorandum, subscription agreements, etc.) are clear, compliant, comprehensive and aligned with the interests of investors, providing full disclosure about the fund's structure, risks and investment strategy.

### **4. Fundraising and Capital Deployment:**

**Capital Raising Strategy:** The MBD works closely with the sponsor's management team to develop a strategy for raising capital. This includes targeting appropriate investor groups, coordinating roadshows and leveraging the broker-dealer and RIA syndicates to access a wide network of potential investors.

**Monitoring of Investor Subscriptions:** The MBD tracks and manages investor subscriptions to ensure that capital is raised in accordance with the fund's offering guidelines. This includes processing subscription agreements, monitoring investor funds and confirming that capital is deployed into the related projects according to the plans communicated to the investors.

### **5. Reporting and Record-Keeping:**

**Regulatory Reporting and Recordkeeping:** The MBD, as a FINRA licensed broker-dealer, is required to submit all selling materials to its regulatory body. The MBD also submits sales

materials to FINRA's AdReg division to obtain their review and sign-off on materials meant for investors. Your MBD is also required to report all securities sales and commissions earned by all related parties to FINRA each quarter through a regular reporting process called FOCUS.

**Preparation for Regulatory Investigation and Litigation:** The Managing Broker-Dealer not only files numerous reports, materials and facts and figures to its regulators, but also prepares its files for future regulatory investigations and possible litigation. In the eyes of regulators and litigants, compliance activities did not happen unless documented. FINRA and the SEC regularly audit MBDs to ensure offerings throughout the country are compliant with securities laws. Your MBD arms and safeguards its files in preparation for these inevitable events.

**Ongoing Compliance Monitoring:** Your MBD monitors the fund's compliance throughout the life of the investment, not just during the capital-raising phase. This includes monitoring investor reports and quarterly and annual financial statements. TOBIN's founder and CEO often invests alongside other investors in order to augment such oversight.

**Investor Reporting:** Managing Broker Dealers assist in providing regular reports to investors regarding the status of their investment, the fund's performance and any updates on the related project or business. This transparency is essential for maintaining investor confidence and trust.

## 6. Risk Management:

**Mitigating Investor Risks:** By ensuring that all aspects of the fund's offering are properly vetted, documented and distributed through appropriate channels, the Managing Broker Dealer helps reduce investors' risks. This includes ensuring that the offering complies with legal standards and is sold only to suitable investors.



### So there you have it

The Managing Broker-Dealer's primary role for a Reg D offering is to ensure compliance with regulatory standards and manage the distribution and sale of securities and related money flows. The MBD's duties span from regulatory oversight and investor suitability checks to marketing support, capital raising and exceptional record-keeping. By providing these services and safeguards, the Managing BD protects investors and ensures the fund operates smoothly, meeting all legal and regulatory requirements while facilitating efficient capital deployment into projects that create wealth for investors. ▲