



3PM

**THIRD PARTY MARKETERS
ASSOCIATION**

Principles and Best Practices

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While the information provided in this document is meant to serve as a guide for 3PM’s members, the information contained herein is not all inclusive and should not be used without consultation with a Securities Attorney or other industry professional who has legal and regulatory expertise and who can offer you advice specific to your individual business.

I. Code of Professional Conduct

The Third Party Marketers Association believes that its members (“3PM Members” or simply “members”) provide an essential service to the investment community through representation of products that may normally be inaccessible to the broad universe of potential investors. Given the complex nature of the marketplace and the competing demands of a variety of constituents, we believe that it is appropriate to outline the basic principles of member conduct. Adherence to these principles both reinforces the stature of our member firms and provides a standard of measurement which can strengthen the investment industry as a whole.

A) Ethics

At all times, 3PM Members shall conduct themselves in a manner consistent with maintaining the highest degree of moral and ethical behavior. 3PM Members are committed to promoting integrity and maintaining the highest standard of business conduct in all of their activities. We aspire to act with integrity, competence and respect.

B) Integrity

Strict adherence to standards and laws established by all sanctioned relevant governing bodies is essential. In addition, business practices should be conducted with clarity, honesty and reliability. Client interests should take precedence over personal business interests and success must be the result of honest effort and superior skills rather than manipulative or deceptive practices.

C) Confidentiality

Confidential information generated and gathered in the course of our business is a valuable asset. Protecting this information is critical to our reputation for integrity and our relationship with clients, and ensures compliance with regulations governing the financial services industry. All information shared with 3PM Members should be held in the strictest confidence even after an assignment ends. All confidential information, regardless of its form or format, must be protected from the time of its creation or receipt until its authorized disposal.

D) Conflicts of Interest

Conflicts of interest inevitably arise in business. A 3PM Member must make a full and fair disclosure of any potential conflict that arise and could reasonably be expected to impair independence and objectivity or interfere with respective duties to clients, prospective clients, and/or employer. Such disclosures should be prominent, delivered in plain language, and communicate the relevant information effectively. Specifically, disclosure must be made when a member has a beneficial ownership in any transaction,

and/or when the member will receive any compensation, consideration, or benefit received from, or paid to others for the recommendation of products or services.

E) Anti-Fraud

At all times 3PM members are subject to the anti-fraud provisions currently found in federal statutes and in the rules and regulations of the industry's self-regulatory organizations. As an overriding statement, members are expected to conduct themselves in a manner which provides clients, prospective investors, regulators and other industry participants with information and representations that are clear and free from any misrepresentation or omission of material fact or event. Further, members are expected to diligently review the sources of potential funding to discover and/or avoid violation of the Patriot Act and potential money laundering activities.

F) Transparency and Disclosure

Except as may violate conditions of confidentiality, all information an investor may deem to be relevant, including but not limited to that regarding investment personnel, past histories, breaches, citations, performance, management fees, commissions and schedules of payment need to be disclosed in advance of any investment decision to all relevant parties including investment staff, trustees and management. . It is understood that on occasion, the expectation or requirement for disclosure may create a conflict with the member's obligations for confidentiality and/or the protection of trade secrets. In such instance, the member should attempt to receive permission to make such disclosures, or may require that such disclosures may only be made pursuant to an attendant confidentiality agreement.

II. Requirements for 3PM Membership

- A) Membership is offered solely to sales and marketing organizations in good industry standing.
- B) All sales professionals of the firm must be registered and licensed with the appropriate regulatory authorities.
- C) All firm owners and principals must have a minimum of 5 years of direct investment management and/or financial services related business experience.
- D) All employees and owners, or at least two management team members (CEO, CFO, CCO and/or COO) must attest via signature that they, nor their firm, nor any of its employees or owners have been the subject of any revocation, censure or litigation by the regulatory bodies that govern the financial services industry, including FINRA and SEC. If this has occurred, a detailed explanation must be attached for which 3PM will determine eligibility on a case by case basis.
- E) Any exceptions require Board approval via negative consent; exceptions are rarely granted.
- F) Firms seeking membership must complete the application process and all required attachments in their entirety.

III. Best Practices

The following best practices are intended to provide members with guidance regarding issues that are essential to the conduct of a successful business as a third party marketer. To the extent that business practices are enhanced at individual firms, we believe that the reputation and standing of our industry will be both strengthened and enhanced. Given that our collective businesses cover a wide range of products and broad universe of potential investors, and given that the respective regulatory framework is inconsistent, incomplete and at times contradictory, these best practices are neither comprehensive nor precise. However, 3PM believes they provide a useful overview of many of the essential requirements to conduct ourselves in a manner which improves the opportunity for success and adheres to our association's Principles and Code of Professional Conduct.

A) Compliance: Adherence to Industry Rules, Regulation and Policies

1. To be a third party marketer, 3PM believes the individual and/or firm must be engaged in a systematic and habitual conduct of its business. To the extent that the business is limited to part-time activities, or to a restricted number of contacts, we do not believe that the business will have sufficient resources to comply with the regulatory, statutory or common law requirements imposed on our industry.
2. As noted above, compliance requirements will vary depending on several factors, including: a) the nature of the product. e.g., publicly traded, private placements, hedge funds, or hybrid vehicles, b) the geographic location of the manager or the potential investors, and c) the nature, size and sophistication of the potential investors. It is expected that all members will be required to register with an appropriate governmental authority. This registration may include the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), state securities departments, the Financial Services Authority, or others. It is essential that prior to engaging in any fundraising, consulting or advisory assignment, the member must determine the relevant requirements and obtain the needed registrations and/or licenses.
3. Compliance requirements vary depending on several factors, including but not limited to the nature of the product with which the third party marketer will be working (e.g., publicly traded securities, private placements, hedge funds, or hybrid vehicles), the geographic location of the manager or the potential investors as well as the nature, size and sophistication of the potential investors.
4. Once registered, members must ensure that each of its employees obtains the licenses that are required for their respective responsibilities. These licenses may be required for a range of activities including sales and marketing and financial reporting. Further, steps should be taken to ensure that registration and licenses are kept current. These steps will include continuing education, periodic testing and/or reviews, and an assessment of the firm's business activities.

5. Regardless of the registration and/or licensing required, each member should establish a routinized and reliable record keeping system that covers all aspects of its business, including financial reporting, sales and marketing contacts, marketing materials, investment contracts, and the like. This recordkeeping regime should be established for the dual purposes of prudent business management and documentation that activities are being conducted within the scope of regulatory requirements.
6. Regulatory reporting is a necessary and essential element of compliance. All reports should be filed completely and on time.
7. Compliance is an ongoing process. Due to the changing nature of the marketplace and the attendant regulations, a review of compliance procedures should be conducted at least annually. This review should include consideration of whether registration may be required with additional regulatory authorities or in additional jurisdictions. In addition to the filing and regulatory requirements noted above, it is suggested that each member develop firm specific policies and procedures to address each of the following:
 - Clear and concise definition of the member's scope of business
 - Perceived ethical violations
 - Entertainment and gifts to prospective clients and or investors
 - Political contributions
 - Permissible and prohibited outside business and investment activities of each member/employee of the firm.
8. In recent times many Public Pension plans have instituted specific policies relating to Third Party Marketers. Such policies require disclosure regarding the role of the third party marketer, copies of the 3PM's bio or resume, a description of the compensation paid, a list of the services performed, copies of the agreement between the 3PM and an investment manager as well as an political contributions made to political officials associated with the investment board. While such approach is currently limited to large public plans, in the future other investor groups may require similar information.

B) Expected Activities of a Third Party Marketer

The following outlines the scope of activities that may be included in a typical engagement as a Third Party Marketer. This description details the duties that may reasonably be expected by the member, the client, prospective investors, and relevant regulators.

1 Due Diligence – Prospective Client/Manager

Conducting due diligence on prospective clients is critical. It is expected by prospective investors and is essential to the success of a member's business. Insufficient or inadequate due diligence may result in a failed business opportunity, ongoing reputational damage, and potential regulatory or legal exposure. In every instance, all due diligence activities should be documented with the expectation that they may be subject to third party review.

When conducting due diligence examination 3PM members should include the following as part of their review:

- a) **The Firm** including the history of the firm, ownership and changes over time, history of litigation or other legal action, regulatory registrations resources and financial condition.
- b) **The People** – reviews should focus on the firm's staff including Principals, the investment team, and key back-office professionals. Other factors such as staff turnover as well as compensation structure should also be explored.
- c) **The Investment Philosophy, Strategy and Process** - Ensure the Philosophy, Strategy and Decision Making Process are clear and can be succinctly articulated and easily understood.
- d) **Performance, Risk Statistics and Other Characteristics** - An evaluation of performance should include a historical review of performance, the calculation methodology utilized, as well as its compliance with regulatory and industry standards such as GIPS. If risk statistics or other characteristics are utilized, the member should understand the meaning of such statistics, how they are calculated and how to explain them to potential investors.

2 Marketing Plan

When accepting any engagement, 3PM Members should prepare a thoughtful and reasonable marketing strategy that will accomplish the goals of the investment manager. This will allow the sales program to proceed more efficiently and promote more effective communications with the member's client. When creating this marketing plan, 3PM members should include information on the current market environment, competitive position, potential target markets and whether the product is suitable for the identified prospects.

3 Sales Plan and Collateral Materials

Once a marketing plan has been developed, a detailed sales plan should be created which will articulate the manner in which the plan will be executed. A sales plan should include a prioritization of prospective clients, methods for communication, a list of collateral materials to be created and used to educate potential clients and gatekeepers, as well as reporting system to keep the manager client current on the scope and success of sales program.

Once collateral materials are agreed upon and created, both the 3PM Member and the product sponsor should review each piece to ensure compliance with regulatory requirements and industry guidelines such as GIPS and restrictions on advertising and general solicitation. 3PM Members should also work to integrate their fee disclosure into all marketing materials. Such reviews should be handled by personnel within the firm who have responsibility for compliance and should be documented.

Throughout the execution of the sales plan, 3PM members should obtain and document current information regarding any prospective investors to ensure that the investment being recommended is consistent with the prospective investor's risk tolerance, investment experience, financial condition and other investments they currently own.

4 Client Services

If a 3PM Member is charged with ongoing client service, they should ensure there is a mechanism in place to allow for the receipt of client and portfolio information in a timely and accurate fashion. It must be recognized that a continuing assignment assumes that the member will be conducting and evaluating this information as though it were a continuing due diligence process.

C) Business Management

The success of a member's third party marketing program, depends on the structure and stability of its own business model. The following are suggestions and or elements that we believe enhance the prospects of success.

1 Firm Viability and Stability

The member's business should have a clearly defined management structure, with one individual clearly designated as being responsible for monitoring business ethics and compliance matters. This position should have direct access to senior management and should be required to provide regular compliance reports, not less frequently than annually.

2 Manager Agreements

All engagements with clients should be documented in a formal contract, which details performance expectations, compensation arrangements, and representations that all activities in the assignment will be conducted in accordance with regulatory requirements.

3 Record Keeping

The firm should make every effort to keep a record of all marketing contacts made by the business. These include notes of physical or telephonic contacts, hard copy mailings, electronic mailings (including e-mails, instant messaging or text messaging), marketing materials, investment contracts, offering memorandum, due diligence materials, and financial records. These records should be backed up on a regular basis and should be archived or stored in a location other than the principal place of business. Record retention should be kept for a minimum of three years and depending on the jurisdictions in which the member does business, this retention period may extend to five years.

4 Business Continuity

All firms should have a business continuity plan in place that anticipates actions to be taken in the event of physical disruptions or the loss of a key individual in the business. These plans should be communicated to clients as well as prospective investors who may need information during the period of disruption.

5 Advertising and Public Relations

Although most 3PM Members do not have active public relations or advertising programs, it is becoming more common to use websites as a vehicle to define our businesses and/or introduce ourselves to prospective clients or investors. It is specifically noted that most regulatory authorities may consider websites as general solicitation or advertising. As such, each member must exercise both prudence and caution in determining the business purpose and the content included in this medium.

3PM Members should ensure that all information contain on their website is accurate, fair and balanced, that the 3PM Member reviews the website content and the person responsible for compliance signs-off on its use, and that all website content is fully documented

6 Use of External Resources

In the event that the firm has limited resources, it should avail itself of outside expertise whenever needed. At the least, this should include the services of an independent auditor and in most instances of outside counsel who will be familiar

with the requirements of the various jurisdictions in which the member may be doing business. It is also commonplace to seek the assistance of specialists in information technology to ensure the viability of computer programs used in the operation of the business (including the back-up and archiving of firm data and documentation).

7 Continuing Education

3PM members should maintain an ongoing program of continuing education that ensures not only that regulatory requirements are met, but also enhances the ability to understand changes in the overall investment market, changes in investment products, and evolving investor preference.

IV. Definitions

Given the complexity of the financial services industry and vigorous discussions surrounding Third Party Marketers, the following definitions are offered to provide common points of reference for both association members and those with whom we interrelate. We believe that these definitions are important to the extent that many are not “terms of art”, i.e., they have no precise legal definition. We believe this lack of precision can lead to misunderstandings as well as provide a context for misinformation and/or ill-advised decisions or policies throughout the industry.

- A) **Central Registration Depository (CRD)[®]**, the central licensing and registration system for the U.S. securities industry and its regulators. It contains the registration records of more than 6,800 registered broker-dealers and the qualification, employment, and disclosure histories of more than 660,000 active registered individuals. Each firm must also use the CRD system to keep informed about new guidelines and best practices through FINRA Announcements, as well as, file all the necessary reports and fees with SEC and states securities regulators.

- B) **Finder** - An intermediary who acts on a casual basis simply by making a prescient telephone call or bright suggestion that puts a buyer in touch with seller. In the United States, a finder’s fee is the compensation given to an intermediary in a business transaction. Usually there is a casual relationship between the one party and the intermediary (the finder), and another relationship between the finder and the secondary party. The two parties of the transaction would not have met if it weren’t for the work of the finder. Such compensation is regulated by contractual agreement and law in the United States. Unless the proposed transaction also includes a licensed broker, some jurisdictions view charging a finder's fee in these cases is illegal. The investment manager should check local laws to be sure he is in compliance with them before paying a finder's fee. If it is legal, a finder's fee should be discussed early in the process and disclosed.

- C) **FINRA** - The Financial Industry Regulatory Authority is the largest independent regulator for all securities firms doing business in the United States. FINRA oversees nearly 4,750 brokerage firms, about 167,000 branch offices and approximately 634,000 registered securities representatives. The regulator is dedicated to investor protection and market integrity through regulation and complementary compliance and technology-based services.

- D) **Fixer** – An individual or institution that creates a biased environment to influence the outcome, decision of a manager search. Plan sponsor fixers may include investment staff, trustees, management or elected officials (current or past members with special fund access); fixers also include investment managers who hire “individuals with special access” to assist with specific searches.

- E) **Investment Adviser** – An advisor who provides investment advice for a fee. Investment advisors must register with the SEC under the Investment Advisors Act of 1940 if the firm has \$30 million in assets under management. With less than \$25 million in assets, the advisor can only register in the individual States in which it does business.
- F) **Investment Adviser Registration Depository (IARD)** is an electronic filing system that facilitates investment adviser registration, regulatory review, and the public disclosure information of investment adviser firms. FINRA is the developer and operator of the IARD system. The system has been developed according to the requirements of its sponsors, the Securities and Exchange Commission (SEC) and the North American Securities Administrators Association (NASAA), along with those of an Industry Advisory Council representing the investment adviser firms.
- G) **Investment banker** – A member of a firm 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. Acting as underwriter or agent that serves as intermediary between the issuer of securities and the investing public. Where a client relationship exists, the investment banker’s role begins with pre-underwriting counseling and continues after the distribution of securities.
- H) **Investment management** – In general, the activities of a portfolio manager.
- I) **Lobbyists** – The persons or groups of persons who solicit legislators, other public officeholders, or staff in order to influence the actions of a legislative body or other decision making public body in the interests of a special group.. The lobbyist contacts and confers with members of the legislature or other holders of public office to persuade them to support actions favorable to client's interest. Lobbyists may be legally required to register with governmental authorities as lobbyist and to submit reports of regulated expenditures incurred during lobbying activities. Lobbyists may also attend and represent local organizations at state and national association meetings. Legality and disclosure of any finder’s fee should be checked with regulatory authority and institutional investor by investment manager.
- J) **Paid intermediaries** – People or institutions empowered to make investment decisions for others.
- K) **Placement Agent or a Private Placement Agent** - An individual, or, more frequently, a firm, that assists entrepreneurs or private companies looking to raise private equity or other limited partnership interests through a so called private placement. A Placement Agent is distinguished from a “Finder” in that the Placement Agent is registered with a regulatory organization and/or government entity and is licensed to perform these activities. Within the context of private equity, placement agents are licensed to serve several functions: raise growth capital, mezzanine capital or venture capital for a company; raise investor commitments to new private equity funds; advise existing

owners of private equity assets on secondary market sales of their interests. As such, the placement agent acts as an intermediary between those seeking to raise money and various investors who may be interested in investing in the company looking to raise funds. Many placement agents are structured as groups within large investment banking firms (e.g., Credit Suisse, Lazard, UBS Investment Bank, Citigroup) or as separate boutique investment banks licensed under FINRA and the SEC. Placement agents will regularly seek to raise capital from a variety of institutional investors (e.g., pension funds, insurance companies, endowments, fund of funds, Sovereign wealth funds) as well as high net worth individuals. Placement agents are most often compensated through fees paid by the company or individuals raising capital, based on the amount of money raised. They are required by law under the Investment Advisors Act of 1940 to disclose under Rule 206(4)-3 the following: name of solicitor, name of advisor, nature of relationship, statement that solicitor will be compensated by advisor, terms of compensation, and any additional charge, if any, that will be added to advisory fee.

- L) **Registered investment advisor (RIA)** – An investment adviser that is not a FINRA licensed broker/dealer or does not have \$25 million under management may register with the individual States. The RIA may then pick stocks, bonds, mutual funds, partnerships or other SEC registered investments for clients. A firm is required to register as an investment advisor with each state securities regulator where it maintains a place of business or where the firm has more than 5 investment advisory clients. They may be paid on a fee-only or fee plus commission basis. Usually fees are based on a fixed percentage of assets under management. It is important to recognize that although there is a certain level of similarity between the various state securities regulators and the SEC with respect to regulation of investment advisors, there are significant variances among state securities regulators and the SEC. Currently there is a significant difference between registering with the SEC and individual state securities regulators.

- M) **(SEC) The U.S. Securities and Exchange Commission** - Its mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions. The SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

N) **Third Party Marketer** – An outsourced intermediary that provides investment managers with value added marketing, sales and client services. In the spectrum of traditional investment management, many fund managers outsource marketing either to complement an internal sales resource or to fulfill the complete marketing function. People, who represent investment managers, are licensed registered investment advisor representatives or placement agents of a broker/dealer, vet the financial suitability of potential buyers, and line up interviews with top candidates. Such a person or firm would definitely require a contract at the outset of the sales process that would specify his fee, typically a percentage of the sales fees which would be disclosed to all prospects. Whenever a deal involves a professional, the payment is typically called a "referral" fee, rather than a finder's fee. Third Party Marketers vet investment firms and investments to provide an independent verification to the investments soundness of the investment management firm they represent. They have gone through a vigorous due diligence process by the independent marketing firm. Third Party Verification is now a defacto standard for many managers when a sophisticated financial intermediary represents their firm. 3PM registered firms are subject to SEC, FINRA and state rules, regulations, and law. Violations of securities rules, regulations, or laws, to which the Firm is subject may result in penalties being imposed on the Firm or any persons associated with the Firm by one or more regulatory agencies, and, in addition, may subject the Firm, or such persons to civil liabilities.