

OUT OF THE ETHER

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Brad Watt

PART III

Anesthesia was developed in 1884 and has been used by doctors, surgeons, and dentists for years, and likely we have all enjoyed the benefits of “pain free” invasive procedures. However, the pain comes after the anesthesia wears off, and we realize just how “desensitized” we were to the pain. Financial investing in this current environment can very much behave like anesthesia. We all know that in order to keep the economy on life support, the Government has been flooding the market with massive capital injections. This quantitative easing has fanned the flame of low yield and risk spreads, with corporate bonds now trading a scant 50-100 basis points above comparable treasuries. These low rates are inflicting “pain” on millions of savers and investors, who are worried about running out of money in retirement. As a result, and in response to low yields, many investors are “anesthetizing” themselves to the realities of

risk and starting to once again chase yield. If the recent crash taught us anything we should have learned that *“the investment that promises you everything you want, will risk everything you have.”*

Unfortunately, Wall Street, in its insatiable hunger for more fees, more deal flow, and more influence, usually presents an unbalanced view of risk. Instead of asking investors if they are willing to risk their capital for higher yields...how about asking them if they are willing to risk their capital for a total loss. Framed in this light...how many investors would still take the bet? Focusing the conversation on “loss of income” versus “loss of principal” is disingenuous at best and catastrophic at worst. Unfortunately, focusing on the income and not the principal is the first liter of anesthesia that gets released into our animal spirits. As financial planners and investment advisors, let’s be sure that we and our

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investors remain vigilant in this “low rate” environment and don’t get anesthetized to risk. Collectively, we are probably due for a reminder that the Greater Fool Theory will not be a viable investment strategy this time around, particularly in overbought asset classes with mediocre fundamentals, minimal current return, and a speculative exit strategy. I am reminded of Will Rogers’ famous quote: *“You don’t have a return on capital until you have a return of capital.”*



Brad Watt is an independent real estate investment advisor and President and Managing Partner of Petra Capital Advisors, www.petracapitaladvisors.com. He has over 25 years experience in structuring, marketing, and managing real estate investment programs which total over \$3 Billion dollars in equity and debt offerings. If you or your clients are looking for high-quality income solutions that are secured by real assets and strong fundamentals, please give us a call to discuss how we can construct a customized real estate portfolio for you. Contact Mr. Watt at 719-494-1910 or bwatt@petraca.com

THE DEATH OF REG D

Doug Schriener

Regulation D is the exemption used by hundreds of small programs to raise money from the marketplace by using an offering memorandum and going directly to the investors without a government agency reviewing the merits of the offering. NASA (the National Association of Securities Administrators) would prefer that each of the states where investors participate require a review by that state prior to distribution of the offering. Reg D exemptions were originally designed to be an economical way for small companies to raise small amounts of money to finance growth. The cost of capital is high as a percentage of the money raised, but the total front end outlay is generally manageable if the security is structured appropriately. NASA and several consumer activist organizations are pushing for Reg D to come under the supervision of the States Securities Commissioners.

FINRA announced (through Notice to Members 10-22) that Managing Broker Dealers were going to be subject to particular review for authority, written supervisory procedures, escrow account activities and sales practices relating specifically to Reg D offerings. There were also additional warnings about PPMs as written communication, structure involvement by the BD, and due diligence



efforts. This has reduced the number of managing BDs in the marketplace and slowed the offerings of small sponsors.

There have been several spectacular Reg D failures in the past several months which have caused insurance companies to eliminate Reg

D offerings from Errors and Omissions coverage. (Have you noticed the cost of E&O recently? Take another look at deductibles and exclusions. If you don’t have a copy of your policy in your files, you have no way to verify your coverage.) Many strong BDs are removing Reg D offerings from their platforms because of the lack of E&O coverage. Many Direct Placements in general are being removed for this same reason.

The most significant development in the Reg D marketplace is the emergence of failed programs in receivership initiating class action law suits against the BDs and their principals for return of commissions. The premise is that these programs were doomed and that if the BDs had conducted adequate due diligence, the BDs would have discovered the flaws and not approved

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EMBRACING CHANGE

Kimberly Springsteen-Abbott

You can stand out from your competitors because of a willingness to embrace creative and innovative approaches to solve client needs by providing them with a “differentiating edge”.

Due to the continued negative effects of the market, I thought it necessary to reaffirm some opportunities still available for your clients today. The increasingly competitive nature of the global environment has only intensified since the last market adjustment. Those wishing to survive, and ultimately thrive, need to develop “a differentiating edge.” I had a great teacher, our founder, George Springsteen, who taught me: “Embrace change because change is the only constant in life; and know that with change, comes opportunity.”

Investors appreciate not having to get into the details of every investment choice they make. They want to understand that they can trust your abilities to guide them through the long term. Alternative Investments can offer that “differentiating edge” in their overall long-term portfolio performance. Creating an investment strategy means developing a plan that maps out the choice of investments, how each choice fits within that strategy and the benefits each brings to them. When using the right combination of alternative investment products at

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appropriate investment amounts – without sacrificing liquidity – you can develop a significant investment strategy worthy of a phone call to your client. Now is the time to broaden your clients’ investment horizons.

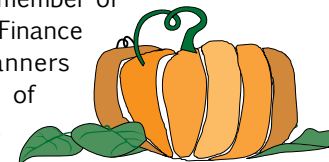
As an alternative investment sponsor, our “differentiating edge” has several facets. We have, despite the down turn in the economy, been diligent at assembling a first-rate team of professionals capable of conquering - through innovation, creativity and adaptability – ever-changing client demands and market requirements. Success has meant keeping up with the changes in the marketplace and staying ahead of the curve to deliver sensible solutions to our broker dealers. We customize our products to meet client needs and strive to deliver innovative solutions that add value and decrease costs to investors. With our partners and investors, we understand their sense of urgency and the need for timely communication during the life of every fund.

As a leasing company and General Partner, it has been an exciting and fulfilling journey to build this business with an amazing and capable team that always goes the extra mile. Our “differentiating edge” has shown considerable revenue growth, thoughtful product development, sturdy structure and reliable performance. We do not live in a static environment and recognize the appropriate time to expand, diversify or retract when necessary. In a marketplace that is always volatile (on some level), it is crucial that our clients are able to realize a return on their investment.



Kimberly Springsteen-Abbott is CEO and Chairman of the Board of Directors of Commonwealth Capital Corp. and its Broker Dealer Subsidiary, Commonwealth Capital Securities Corp. which she has held since 1997. Ms.

Springsteen-Abbott has over 3 decades of experience in the financial services industry, especially in the area of alternative investments. From 1980 to 1997 she was with Wheat First Butcher Singer where she served as Senior VP & Marketing Manager for the Alternative Investment Division. She is a member of the Equipment Leasing and Finance Assoc, the Financial Planners Association, and the Board of Trustees for the Investment Program Association.



Reg D Continued

the offerings. Since “obviously” the due diligence was not conducted, the commissions were received fraudulently and should be disgorged. This is not a FINRA or SEC sponsored activity, but an action of the Bankruptcy Court. As BDs and RRs we have no say and no sway in this venue. An associate of mine says that a “Bankruptcy Court has the ability to make water flow uphill.” I have contacted FINRA and the SEC and both have steered clear of this issue, reminding me that they do not have standing either.

Given these issues, it makes little sense for anyone to engage in Reg D sales: heightened regulatory scrutiny; no E&O insurance; and the BD and its principals can be sued out of business in Bankruptcy court.

The U.S. Chamber of Commerce claims interest but believes that any action on their part now would be premature. The Investment Program Association (the trade

association most involved with structuring and offering direct placement programs) feels that they have more important issues to spend their limited resources on. The SEC and FINRA have their own axes to grind.

The Broker Dealer industry does not exist to create liquidity or provide returns for retail and institutional investors – those are a by-product of raising capital for the growth of domestic industry. Reg D is the last viable method for raising money for small companies. Yes, Reg D has been abused by serial sponsors, but the SEC could have stopped Provident, Medical Capital and Sun West long before they became the spectacular failures of this decade. What is happening here is that the righteous use of Reg D will cease to exist because we have been trained by the regulators, the insurers and the courts that it is just not worth the risk.

Rest in Peace.



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