Due Diligence of Third-Party Marketers For Asset Managers

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Third-party marketing firms (often referred to "TPMs" or "3PMs"), as the name suggests, market financial products on behalf of other investment advisers. Through our experience researching TPMs, we've gathered several pointers for meaningful due diligence. We understand that choosing the right TPM is an important decision. They will represent your firm and present your products. By engaging the right TPM partner, lasting relationships can occur between you and the intermediary and institutional investor community. You've also got regulatory and reputational incentives to investigate these potential TPM partners. Whether you are conducting the due diligence yourself or outsourcing this task, below are crucial areas of focus with accompanying rationales to guide your research.

Firm

This is the most subjective area of diligence and, of course, will vary based on several factors, including your products, target audience, fund size, timelines, and corporate culture. That being said, a variety of research methods and top-line considerations can determine if it is a match.

- Use discussions via multiple methods (phone, email, in-person) to ensure the TPM's representatives have the demeanor and skillset for which you seek. Consider that the representatives will be the spokespeople for your products and might need to be embedded within your firm for a time to grasp the product nuances.
- Conduct a review of prior work experience with a focus on areas of expertise, success, and, if necessary, the ability to grasp complex financial issues relevant to your products or desired distribution channels. For example, is the firm able to handle both domestic and global marketing? Find out their strengths as well as their weaknesses.
- Consider the firm's preferred marketing style. For example, does the firm prefer marketing at a firm or product level? Are they used to marketing to retail and/or institutional audiences?
- When possible, get referrals and/or endorsements, preferably from familiar sources. Inherent in this last area is a discussion regarding the TPM's total roster of current clients. Does a large roster reflect the excellent abilities of the TPM? Will your products be lost in the shuffle, or does the TPM have enough representatives to cover everyone? Will your product be competing with similar products already sold by the TPM?
- Determine how you will interact with the TPM and their marketing efforts. Will your portfolio manager or similar fund expert participate in calls and meetings when necessary? Will the TPM relay questions to you that they are unable to answer from intermediary or institutional investors?

The Registered Representatives

Get a list of the TPM's Reps likely to sell your products and then dig in. BrokerCheck is a great starting point, with a wealth of pertinent information.

- Licensing: Beyond the expected Series 7 and 63 FINRA licenses, consider whether the Reps have licenses appropriate specifically for the products you want sold? For example, do they have a Series 79 license appropriate for your investment banking activities? Are they licensed to sell in the states you want to target?
- Work history: This may help answer some of the "firm" questions discussed above. Consider whether the Reps have sufficient industry experience to meet your needs. Also, review the disclosures section. If there are disclosures, read closely to determine their materiality and, of course, don't be shy asking follow-up questions if necessary. Have the Reps been employed at several firms, which could be a red flag? Do the Reps have outside business activities that could be a conflict with efforts related to marketing your fund?

- Do you feel confident the Reps will understand and comply with your relevant written policies and procedures and present your products in a thorough and ethical manner? Failure to do so can reflect upon you as the product sponsor.
- Additionally, find out if the Reps are registered with an outsourced Broker-Dealer ("BD") or registered with the TPM? Either way, check the BD's record on BrokerCheck. Take a quick look at who are the other representatives for whom the BD holds licenses and see if that gives you any insights.

Compliance Considerations

While the TPM's Reps will be associated with a broker-dealer, that does not necessarily mean that the TPM is a Registered Investment Adviser ("RIA") with all the compliances policies and procedures you would expect of an RIA. Still, certain best practices can and should be anticipated, along with expected compliance with regulatory requirements pertinent to your firm.

- As noted, while the TPM may not be an RIA, certain policies and procedures are likely to be in place related to other areas such as: Anti-bribery/Corruption; Business Continuity/Contingency Planning; Conflicts of Interest; Gifts and Entertainment; Insider Trading; Pay-to-Play; Personal Trading; and the Foreign Corrupt Practices Act if operating in a foreign country.
- Other questions to consider:
  - Can the firm provide evidence of insurance indicating the insurance carrier, amount of coverage, the period of coverage, and insurance type (e.g., E&O, D&O, etc.)?
  - Do lobbying rules apply? This is only relevant in certain states, but worth discussing to make sure your chosen TPM complies with local regulations.
  - Does the firm outsource any of its work to third-party vendors, such as for document retention? If so, what's the process for reviewing cybersecurity?
  - Does the TPM BD's policies and procedures conflict with your adviser policies and procedures?
- Finally, has the TPM been subject to any regulatory examinations and, if so, ask if there were any noted exceptions/deficiencies and remedial actions taken. Same question in relation to any threatened, pending, and/or settled litigation or arbitration.

Contract

Contractual concerns are likely the least enjoyable part of forming an engagement. But, like good fences making for good neighbors, good contracts can ease potential friction. What makes a good contract will vary based upon your products and goals; several elements are worth discussion to determine whether the TPM is your best choice.

- Payments: Probably the most obvious discussion will revolve around payments. Will it be through commissions and/or include a set retainer? Over what time period? Will there be continuing charges even after

initial sales are complete or the relationship has ended (trailing fees)? All payments should be detailed specifically in writing.
- Competing Products: Will there be an exclusivity clause? This goes both ways: whether the TPM’s representatives will be allowed to market competing products and whether you can have competing marketers selling your product.
- Leads: Who owns the leads? Who can communicate with them going forward about your product and for how long? What if you already had a relationship with some of the potential leads? Can you discuss other products with the lead outside of the TPM engagement? Do you want to limit the TPM to a specific audience such as RIAs or regional BDs? All scenarios that need discussion.
- Regulatory Compliance: Contract should include a clause requiring current and future compliance with all applicable laws and regulatory requirements. This will likely include ensuring that no marketing material will be utilized that was not approved by you.
- Indemnifications: You can’t pass on your regulatory responsibilities, but you can ease monetary issues if things go sideways.

As noted at the outset, there are a variety of factors that will guide your research and interpretation of the results. Just note that throughout the process, the TPM will likely be researching you, too. If the questions are flowing in both directions, you’re probably off to a good start in creating a trusting, powerful partnership. In the end, a well-chosen third-party marketer may understand and present your products even better than you can. That is certainly worth the diligence.

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