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M&A Brokers Receive Relief From Federal Registration
But Must Remain Wary of State Requirements
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Overview

On January 31, 2014, the SEC's Division of Trading and Markets issued a no-action letter[1] effectively permitting "M&A Brokers" to facilitate mergers, acquisitions, business sales, and business combinations (together, "M&A Transactions") of privately-held companies without registering as a broker-dealer, under certain conditions.

M&A Broker and a Privately-Held Company

The SEC's guidance applies to persons engaged in the business of effecting securities transactions solely in connection with:

(i) the transfer of ownership and control
(ii) of a privately-held company
(iii) through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company
(iv) to a buyer that will actively operate the company or the business conducted with the assets of the company ("M&A Broker").

The "privately-held company" cannot be a shell company (a business combination related shell company is permitted), must not have any class of securities registered or required to be registered under Section 12 of the Securities Exchange Act of 1934, as amended ("Exchange Act), or be required to file periodic information, documents, or reports under Section 15(d) of the Exchange Act. The M&A Broker is permitted to advertise that a privately-held company is for sale and list a description of the business, the location, and a price.

Significant Conditions that Must be Satisfied for the Federal Exemption

In issuing this no-action letter, the SEC continually emphasized the importance that certain terms and conditions be satisfied. Some of the specific conditions noted in the letter include that the M&A broker cannot have the ability to bind a party to the M&A Transaction, provide financing for the M&A Transaction, cannot facilitate a transaction for a group of buyers that the Broker helped organize, have custody, control, possession of, or handle funds or securities issued or exchanged in connection with the M&A Transaction. In addition, the M&A Transaction cannot involve a public offering and any securities received by the buyer or the

[1] http://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf?__hstc=2527023.8041fc79095788b7e901361370acf206.1392223822841.1392223822841.1392223822841.1&__hssc=2527023.2.1392223822841&__hsfp=3849321553

M&A Broker in an M&A Transaction will be restricted. This is not a complete or exclusive list of the SEC requirements for the registration exemption.

How We Can Help

While the no-action letter signifies noteworthy progression regarding the treatment of M&A Brokers by the SEC, it only provides a federal exemption to registration pursuant to Section 15(a) of the Exchange Act. Other federal and state laws still have an effect on the registration or operation of broker-dealers with respect to M&A transactions.

The rules under the Colorado Securities Act are more restrictive than the Federal rules when granting a registration exemption. One example of the greater restriction is that to be eligible for the "business broker" exemption in Colorado, the security can only be sold to one person. Due to the greater restrictions in Colorado, the Division of Securities may still bring a cease and desist action under the Colorado Securities Act even if all of the conditions of the Section 15(a) exemption are met.

This is where experienced legal counsel can discern how this no-action letter may affect your specific situation and can provide the necessary expertise in navigating broker-dealer registration in Colorado.

For more information or to discuss specific scenarios, please contact:

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