



NASAA

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**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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January 15, 2016

*Submitted electronically to rule-comments@sec.gov*

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**RE: Release No. 34-76675, File Number SR-FINRA-2015-054**

Dear Mr. Fields:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I hereby submit the following comments in response to Release No. 34-76675, File Number SR-FINRA-2015-054 entitled Notice of Filing of a Proposed Rule Change to Adopt the Capital Acquisition Broker Rules (“the Proposal”).<sup>2</sup> NASAA appreciates the opportunity to offer its comments on the above-referenced Proposal. As a general matter, we are concerned with the impact the Proposal will have on the regulation of firms that engage in the various businesses described in the Proposal particularly as it relates to the interaction of the Proposal with relevant state laws. NASAA asks that, prior to Commission action on the Proposal, the Commission, FINRA, and NASAA cooperate to more fully analyze the interaction between the Proposal and state registration requirements to better harmonize the application of these provisions.

The Proposal would create what appears to be a voluntary registration status at FINRA that would allow certain firms that meet the proposed definition of Capital Acquisition Broker (“CAB”) to either register or—for existing FINRA members—switch their registration status to a CAB. Once qualified as a CAB, firms would be subject to a particular set of FINRA rules aimed at regulating these firms’ business models. FINRA’s definition of a CAB includes firms that engage only in certain activities.<sup>3</sup> Most relevant to NASAA is the Proposal’s inclusion of firms that:

effect[] securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving,

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<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

<sup>2</sup> 80 Fed. Reg. 79969 (Dec. 23, 2015).

<sup>3</sup> *Id.* at 79970.

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securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of an SEC rule, release, interpretation or “no-action” letter that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.<sup>4</sup>

Firms that exclusively engage in this activity are commonly known as “M&A Brokers” or business brokers. In January 2014, as the Proposal notes, the Commission issued a no-action letter related to M&A Brokers.<sup>5</sup> In September 2015, NASAA adopted a model rule that would exempt M&A Brokers (“NASAA Model Rule”) from registration in states that adopt the model.<sup>6</sup> With uniformity in mind, NASAA’s Model Rule parallels language contained in pending federal legislation, Senate Bill 1010.<sup>7</sup>

Under the Proposal, firms that qualify for the no-action relief would be permitted to register with FINRA as a CAB or, if already a FINRA member, switch their registration status to CAB registration. Because the Commission’s M&A Broker No-Action Letter differs from the proposed federal legislation and the NASAA Model Rule, there could be regulatory gaps in light of differences between the definitions of M&A Brokers and the application of other provisions contained in the differing approaches. For example, there are differences related to the scope and breadth of the statutory disqualification provisions contained in the Commission’s No-Action Letter and the NASAA Model Rule. It is possible that as a result, in certain instances, a firm may qualify for the no-action relief by the SEC and be eligible for CAB registration with FINRA, but may still need to register or maintain its broker-dealer registration at the state level.<sup>8</sup> Further, FINRA membership in any capacity, CAB or otherwise, could trigger state registration requirements. These issues need further examination.

While NASAA generally agrees with the Proposal’s aim at reducing the regulatory burdens on M&A Brokers, without more cooperation, coordination, and study the Proposal may fail to effectively achieve its goal. For these reasons, NASAA would welcome the opportunity to work with FINRA and the Commission on the issues presented by the Proposal, and encourages the Commission to delay approval of the Proposal until there has been an opportunity to more fully explore these issues.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 79974; *see also M&A Brokers*, 2014 SEC No-Act. LEXIS 92 (January 31, 2014).

<sup>6</sup> *See* Model Rule Exempting Certain Merger & Acquisition Brokers (“M&A Brokers”) From Registration, *available at* <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept.-29-2015.pdf>.

<sup>7</sup> The text of the bill is available at <https://www.congress.gov/bill/114th-congress/senate-bill/1010/text>.

<sup>8</sup> NASAA notes that the NASAA Model Rule is not self-executing and must be adopted by a state before it becomes effective in that jurisdiction.

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NASAA appreciates the opportunity to offer its comments on the Proposal, and should you have any questions regarding the comments in this letter, please do not hesitate to contact A. Valerie Mirko, NASAA's General Counsel, at [vm@nasaa.org](mailto:vm@nasaa.org) or 202-737-0900.

Sincerely,



Judith M. Shaw  
NASAA President  
Maine Securities Administrator