



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 5, 2015

Senator Joe Manchin
306 Hart Senate Office Building
Washington, DC 20510

Senator David Vitter
516 Hart Senate Office Building
Washington, DC 20510

Re: The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015 (S. 1010)

Dear Senator Manchin and Senator Vitter:

On behalf of the North American Securities Administrators Association (“NASAA”)¹ I write to express support for S. 1010, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act, which would establish an exemption from registration requirements under federal securities laws for persons serving as brokers in certain merger and acquisition deals (“M&A brokers”).

State securities administrators share your interest in establishing a more streamlined framework for persons serving as brokers in M&A deals that involve the transfer of securities. To that end, NASAA recently circulated for public comment a state model rule which exempts M&A brokers from state securities registration pursuant to certain conditions.² You will note that NASAA’s draft state model rule mirrors the federal bill which you are proposing. At the same time, while NASAA supports an exemption for certain M&A brokers, we consider it essential that any such exemption include reasonable investor protection features, including provisions that clarify (1) the disqualification from the exemption of any broker or associated person who is subject to suspension or revocation of registration; and (2) the inapplicability of the exemption to any M&A transaction where one party or more is a shell company.

As you know, the 113th Congress considered legislation that would have established a registration exemption for M&A brokers, but NASAA was not able to support that legislation because it failed to include the aforementioned investor protection features.³ In contrast to that earlier legislation, S. 1010 specifically provides that the new exemption would not be applicable to “bad actors,” or to transactions in which one or more parties is a “shell” company. In view of these improvements, NASAA considers that

¹ The oldest international organization devoted to investor protection, NASAA was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² Notice of Request for Comment Regarding a Proposed NASAA Model Rule Exempting Certain Merger and Acquisition Brokers From Registration Pursuant to State Securities Acts. (January, 2015). Available at <http://www.nasaa.org/wp-content/uploads/2015/01/Proposed-Uniform-MA-Broker-Model-Rule.pdf>

³ Letter from Arkansas Securities Commissioner and NASAA Federal Legislation Committee Chairman A. Heath Abshure to Senators Manchin and Vitter regarding S. 1923, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2014. September 8, 2014 (113th Congress). Available at <http://www.nasaa.org/wp-content/uploads/2013/10/NASAA-Letter-to-Senators-Manchin-and-Vitter-Re-S.-1923-09.08.2014-Final-PDF.pdf>.

S. 1010 strikes an appropriate balance between the legitimate interests of all stakeholders and maintains strong protections for investors and business owners, and is pleased to support the legislation.

Recently, NASAA issued its State Model Rule for comments from the public.⁴ As you know, the State Model Rule was based significantly on your proposed legislation. Through receipt of comment letters to the proposed State Model Rule, it has recently come to NASAA's attention that certain commenters believe there may be room in the definition of an "M&A Broker" to permit unregistered M&A Brokers to participate in an issuer capital raise using Regulation D, Rule 506 *for something other than a Merger and Acquisition transaction*. This is wholly inconsistent with the intent of the State Model Rule and we call it to your attention because we believe they may be a similar risk if the language in S. 1010 is read too broadly. We would appreciate an opportunity to work with your respective offices to clarify this important point prior to the Senate's voting on S. 1010.

Thank you for considering NASAA's views and for working to develop a federal registration exemption for M&A brokers that balances the legitimate interests of all parties, preserves state authority, and maintains vital protections for investors and businesses. If I may be of further assistance, please do not hesitate to contact me or NASAA's Director of Policy, Mike Canning, at (202) 737-0900.

Sincerely,

A handwritten signature in black ink, appearing to read "William Beatty". The signature is fluid and cursive, with the first name "William" and last name "Beatty" clearly distinguishable.

William Beatty
NASAA President and Washington Securities Director

⁴ Notice of Request for Comment Regarding a Proposed NASAA Model Rule Exempting Certain Merger and Acquisition Brokers From Registration Pursuant to State Securities Acts. (January, 2015). Available at <http://www.nasaa.org/wp-content/uploads/2015/01/Proposed-Uniform-MA-Broker-Model-Rule.pdf>