

May 16, 2015

Mr. Bryan Lantagne, Chair of the Broker-Dealer Section;
Ms. Carolyn Mendelson, Chair of the Market Regulatory Project;
Mr. Christopher Staley, NASAA Corporate Office
(Delivered via electronic mail)

RE: NASAA Model Rule Exempting Merger & Acquisition Brokers - Comments

Hello:

Speaking on behalf of several FINRA member firms who primarily engage in M&A Advisory services, we encourage the Broker-Dealer Section to diligently examine the risks that would result if such a broad sweeping model rule is adapted. We acknowledge that certain current staff of the SEC issued no-action relief on this issue last year. At the time of such, we remained confident that M&A Advisors would still need to meet state registration requirements, which positively creates reasonable barriers to entry in this segment of the investment banking profession, but more importantly protects business owners in what will likely be the biggest financial event of their lives. Is it not wise to review the results of such no-action relief before modeling such a broad sweeping exemption? If the SEC is not regulating this industry, nor are our states, is the Broker-Dealer section confident that self-policing will be sufficient? Do we forget the crisis from which we are just now recovering? Bad boy provisions are worthless when no one is confirming such are met. FINRA's rule set, soon to be a limited one for M&A Advisory as memorialized in testimony by Rick Ketchum in front of Congress, serves to continue to protect all parties involved in M&A transactions.

As you are aware, to be registered either with or as a broker-dealer, the M&A Advisor is rightfully subject to background checks, FBI fingerprinting, written procedures, oversight, transparency, examination, public record of disclosures and a limited number of practical rules that ensure they are putting the client's interests before their own. The transactions contemplated in the model rule's current form can result in not only success fees of millions of dollars, but retainers that can be as high as \$75,000 before any work is even performed. The letter of engagement executed by and between the M&A Advisor and Business owner will typically refer to the prior as the "Financial Advisor." The business owner is relying on the Financial Advisor to lead him through, , a highly technical and complex transaction (especially when securities components are involved as a form of consideration). With the exception of what would be considered Main Street transactions, the buyer is often a professional buyer. The Financial Advisor must be equally qualified to represent his client against such buyer.

To more directly respond to the notice, please find comments here that examine section of the current text, followed by thoughts on the specific questions you seek answers on in the Notice.

Responses to Questions

1. Question: 506(c)

Response: (B)(ii) of the rule merely prohibits doing a public offering for a public company - it does not, as written, prohibit a private offering for any party, or a public offering for a non-registered company. The request for comment implies the rule intends to prohibit capital raising, but no such restriction is clear in the language. We believe this requires greater clarification.

2. **Question:** *Size Cap*

Response: What is the benefit of this model rule? If it is to relieve any securities regulation over those business brokers whose function is assist small, main street businesses in typically uncomplicated intrastate sales - a function quite similar to that of a real estate broker with template contracts, online and newspaper listings of the sale with commissions disclosed, we agree this makes sense. Beyond that - beyond anything involving businesses with revenue over \$10,000,000.00 - we believe the result of such a drastic shift in policy will harm retiring business owners. Beyond main street deals, structures are complex, risky, involve professional buyers and often involve hefty upfront fees by the Advisors/Brokers. What good would that do for our business owners? Is the goal to reward those who have boldly broken the law and harm those advisors who have taken all steps to register their businesses/employees? Will dual markets (registered and unregistered) really help these middle market businesses? The rule will certainly bring new parties to this industry due to no barrier to entry. Persons who have no experience in running a full sell side process will enter this space. With no applicable rules regarding their communications with the public, experience can be exaggerated and misleading. Pitching the highest valuation could get the unqualified party the contract, leading to no success in commencing a deal. Finally, we urge NASAA to consider that just because a party has succeeded in running a successful, profitable business, such does not equate to such party being sophisticated in evaluating securities, especially those offered to them as part of the consideration of their life's work.

3. **Question:** *Premature*

Response: Yes. The recent No Action Relief is a drastic shift in the treatment of those seeking securities related transaction-based compensation, as well as overly-broad in comparison to other M&A relief. How is it wise to quickly encourage our states to apply such as law? We urge you to review last week's testimony of SIFMA and that of Mercer Bullard in front of the House Financial Services Committee. Both parties are likely unaware of this request for comment. As SIFMA states, we should at least evaluate the effects of the no action relief before jumping to amend longstanding statutes and well functioning rules/laws.

Most sincerely,

Jessica B. Pastorino
Chair
Coalition of M&A Advisors