



February 26, 2024

Email Only to: [NASAAComments@nasaa.org](mailto:NASAAComments@nasaa.org)

Amy Kopleton, Chair  
Broker-Dealer Market and Regulatory Policy  
and Review Project Group  
North American Securities Administrators Assn.

James Nix, Chair  
Broker-Dealer Section  
North American Securities Administrators Assn.

**Re: Proposed Amendments To NASAA Model Rule Exempting Certain  
Merger & Acquisition Brokers (“M&A Brokers”) From Registration  
January 4, 2024**

Dear Ms. Kopleton and Mr. Nix:

On behalf of the Business Intermediary Education Fund (*BIEF*) and our respective professional associations and members, we write in full support of the proposed amendments to NASAA’s model rule exempting certain merger & acquisition brokers (*M&A Brokers*) from broker-dealer registration (the *Model Rule*). Our organizations and members are described later in this letter.

We have greatly appreciated NASAA’s involvement and continuing support to clarify, simplify, and synchronize both federal and state securities regulation of M&A Brokers in private business sales. We have no changes to suggest to this Model Rule, and we greatly appreciate the Committees’ tracking so closely with the new federal M&A Brokers exemption from broker-dealer registration under Section 15(b)(13), added to the Securities and Exchange Act of 1934 by the Consolidated Appropriations Act, 2023 (H.R. 2617), effective March 29, 2023.

When adopted in each state, the Model Rule will closely harmonize federal and state securities regulation of M&A Brokers. Multi-state M&A transactions are common with sellers, buyers, and M&A Brokers in different states. M&A Brokers, as well as the private company clients they serve, should not need to continually engage securities lawyers to sort through state-by-state variations for their interstate transactions.

By way of background for the Committees and state securities regulators considering adoption of the updated Model Rule, a brief overview of private company M&A follows. Private company M&A range from small “main street” business brokerage (e.g., a corner bookstore) to larger, more complex business organizations (e.g., manufacturing companies), and widely vary by business type and industry. Larger companies’ M&A transactions are supported by in-house management teams and staffing with a wide range of business experience and topical expertise, as well as legal, accounting, tax, bankers, and other professional advisors.

M&A brokers assist business sellers and buyers in accomplishing their shared objective—to transfer ownership of a business. Often, that’s accomplished through their negotiating a sale of assets in exchange for cash—no securities, so no securities regulation applies to the transaction. Sometimes for tax, contractual, licensing, and other reasons their negotiations result in a legal structure transferring equity ownership of the business instead of its assets—triggering securities laws and regulation for a transaction with the very same objective and outcome.

At the commencement of an M&A Broker’s engagement the legal structure of a potential M&A transaction—asset sale or stock sale—is not known. Indeed, whether a sell-side or buy-side engagement, the counter parties are rarely even known until a business is offered for sale. Their M&A transaction’s legal

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structure, terms, and conditions will be negotiated by the parties, often through their legal counsel. The parties control their own decision-making, not the M&A Brokers advising them.

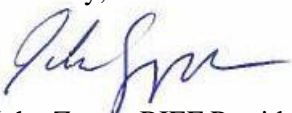
Private company M&A transactions commonly take months to complete, starting from a seller's preparations and marketing a private company for sale, through identifying and screening prospective buyers, through engaging lawyers, accountants, and tax advisors, through negotiating the transaction's binding agreements, the buyer's pre-closing due diligence investigation, and finally through a closing—often conducted by their counsel. Funds exchanged at closing are typically wired between the parties' banks.

The parties' M&A transaction-related agreements include representations, warranties, disclosure schedules, covenants, indemnities, and contractual rights and remedies tailored to the parties' transaction-related risks. In the event of a post-closing dispute, the parties turn to their negotiated transaction-specific contractual rights, remedies, and court or arbitration forums, not securities laws or regulators.

Finally, like the federal exemption, the Model Rule provides only an exemption from broker-dealer registration—securities antifraud prohibitions and regulatory jurisdiction continues to apply in those M&A transactions involving securities. Moreover, most if not all states regulate business brokerage services and/or real estate brokerage services through their professional licensing regimes. Those regimes apply to M&A Brokers based on their services rendered regardless of the overlay of federal and state securities laws and regulation that may or may not apply in a particular M&A transaction. These licensing regimes provide on-going administrative oversight, regulatory gatekeeping, and in most states continuing professional education requirements aligned with business/real estate brokerage services.

We applaud NASAA's leadership and support in adopting the 2015 model rule based on then-pending federal legislation, and now in aligning the Model Rule with the final federal statutory exemption. If you should have any questions, or if any state regulators have any questions about these matters, please do not hesitate to contact any of us.

Sincerely,



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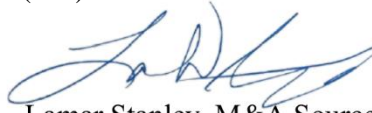
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Sincerely,



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## **OUR ORGANIZATIONS**

### **Business Intermediaries Education Foundation (BIEF)**

The Business Intermediaries Education Foundation is a non-profit organization founded with the mission of creating and enabling activities to uplift the profession through, but not limited to: (1) Information, (2) Awareness, (3) Research, (4) Outreach, (5) Analysis, (6) Exchange, (7) Understanding, (8) Cooperation, and (9) Education. The work of the BIEF is guided by a volunteer Board of Directors comprised of current and past chairs of the leading, international, business intermediary professional associations.

Specific objectives of the BIEF are: (1) Develop cooperation, education, and interchange among worldwide peers and with related professions; (2) Advise, educate, and persuade business buyers, sellers, and their advisors about the value and wisdom in employing a professional business broker or intermediary when selling, buying, or transferring ownership of a business; (3) Cause development and delivery of education and programs to enhance competencies and success throughout the business brokerage, mergers and acquisitions profession or its clientele; (4) Enable study and research into topics of value to the profession and its markets; (5) Establish perpetual self-funding to enable and sustain BIEF's vision and mission.

More information about BIEF is available on its website at: <http://www.biefoundation.org>.

### **Alliance of Merger & Acquisition Advisors (AM&AA) and its Members**

The Alliance of Merger & Acquisition Advisors (AM&AA or The Alliance) is an international professional association of M&A intermediaries and related professionals. The Alliance serves the educational and transactional support needs of middle market M&A professionals worldwide. The Alliance was formed in 1998 to connect M&A intermediaries, CPAs, attorneys, and other experienced corporate financial investors and advisors, and currently has more than 900 professionals that are among the most highly recognized leaders in the industry. The Alliance draws upon proven capital resources combined with a think-tank of transactional expertise to better serve the many business investment needs of middle market companies worldwide. Some members are registered broker-dealers and others are unregistered in reliance upon SEC no-action letters and a variety of state-level transactional exemptions.

Members serve corporate and institutional sellers and buyers of privately held businesses with a wide range of transaction values. These essential corporate financial advisory and transaction services include investment banking, business brokerage, accounting, finance, valuation, tax law, and due diligence.

More information about AM&AA is available on its website at: <http://www.amaaonline.com>.

### **International Business Brokers Association (IBBA) and its Members**

The International Business Brokers Association promotes members' professional development and interests to maximize public awareness of the business brokering profession. The IBBA supports entrepreneurship, and the concept that the investment risks of owning a business deserve a straightforward, professional and honest presentation to both seller and buyer. The IBBA's Standards and Code of Ethics impose obligations beyond those of ordinary commerce. We believe business brokers should be zealous in maintaining and improving ethical practices and sharing with their fellow business brokers a common responsibility for integrity and honor in their business transactions.

More information about IBBA is available on their website at: <http://www.ibba.org>.

### **M&A Source (MAS) and its Members**

The M&A Source is organized and operated to promote members' professional development to better serve their clients' needs, and to maximize public awareness of services performed by intermediaries and ancillary advisors who facilitate solutions available for lower middle market merger and acquisition transactions.

The M&A Source was established in 1992 to address the challenges faced by merger and acquisition professionals. This international organization currently has more than 300 M&A dealmakers including intermediaries, investment bankers, attorneys, accountants, financial planners and others involved in the M&A process.

The goals of the M&A Source are: (1) To advance the members' deal making opportunities, (2) To advance the profession's practice standards by providing a wide array of programs, and (3) To advance each member's personal growth potential through a variety of forums whereby members exchange information and learn from one another.

In addition, there are specific professional duties outlined for M&A Source members. They include: (1) Represent clients in accomplishing the sale of all or part of their businesses, (2) Represent clients searching to acquire companies, divisions or product lines, (3) Advise clients on the current values, structures, strategies and methods for ownership transfers of middle market companies, (4) Facilitate the array of financing necessary to consummate the transaction, and (5) Preserve client confidentiality and transaction details.

More information about M&A Source is available on their website at: <http://www.masource.org>.

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