

AM&AA Licensure Initiative Position Statement & Status Report

After careful study over many years of the confusing and complex layers of state and federal laws and regulations that regulate the securities-related activities of an M&A Advisor/Intermediary, the Alliance of Merger & Acquisition Advisors (AM&AA) concluded that there is an urgent need to clarify -- and, if possible, simplify -- this regulatory maze for the greater benefit of its members and the profession as a whole; as well as the legion of small-to medium-sized businesses that make up 86% of the US Gross National Product and are so important to the US economy; and last but not least, the general public.

It has been gratifying to observe that while the AM&AA initiated this effort, they have been joined by many of the major professional associations which represent business brokers and M&A advisors nationwide, who have contributed time, talent and significant financial support to make this initiative possible. (See attached Exhibit of Sponsors)

By way of quick summary, the AM&AA Licensure Initiative is fully supportive of three, separate but related initiatives:

- ◆ *Private Placement Broker (PPB) proposal, first proposed by ABA*
- ◆ *M&A Broker (MAB) proposal, first proposed by AM&AA*
- ◆ *Small Business Sale Transaction Exemption, first proposed by IBBA*

First, we fully support the adoption of a new class of Private Placement Broker (PPB), as recommended by the American Bar Association, Business Law Section, Private Placement Broker-Dealer Task Force, that will, when adopted, enable registered PPB firms to:

- ◆ *Raise capital from qualified investors, (e.g., high net worth individuals and qualified entities),*
- ◆ *Fully participate in advising, negotiating and structuring private securities offerings,*
- ◆ *Share fees with other registered broker-dealers, if approved by FINRA*
- ◆ *Operate in a simplified regulated environment with a lower setup cost and at a lower annual operating cost each year.*

Most of the heavy lifting for this proposal has already been accomplished. Approximately a dozen attorneys from nearly as many law firms labored for over 6 years to thoroughly study the issue, draft the PPB proposal, and submit their study and recommendation to the Securities and Exchange Commission (SEC) and North American Securities Administrators Association (NASAA). The SEC staff has since been refining and discussing the proposal with state securities regulators through representatives of NASAA.

What remains to be done on this initiative is:

- (1) Continue communicating our support for the ABA's PPB proposal with the various federal and state regulatory agencies,*
- (2) Monitor the development of this proposal through the various federal and state agencies and, if applicable, the Financial Industry Regulatory Authority ("FINRA" f/k/a NASD) to ensure consistency with the original ABA Task Force recommendation, and*
- (3) Coordinate with the ABA Task Force as required on any revisions/changes to the PPB proposal to ensure that our interest is considered/protected as much as possible.*

Second, AM&AA has developed, proposed, and fully supports the creation and adoption of federal and state regulations creating a new system of limited state-level registration and regulation for M&A brokers (the MAB proposal), which would allow a registered MAB firm to:

December 23, 2009

- ◆ Assist in the sale/purchase of a business, regardless of size or ultimate deal structure,
- ◆ List and publicly advertise the business itself for sale,
- ◆ Advise and assist in valuing the business (but not its securities in a market or an offering),
- ◆ Negotiate price and terms of sale,
- ◆ Advertise itself as a "State Registered M&A Broker or Advisor,"
- ◆ Receive compensation from commercial lenders and third-party service providers for fully disclosed referrals, and
- ◆ If approved by FINRA, receive referral fees from registered broker-dealers.

The proposed simplified regulations would require the M&A firm to:

- ◆ Disclose background information about the M&A firm, its professionals, and their credentials,
- ◆ Describe, in writing, the terms and conditions of the engagement,
- ◆ Disclose conflicts of interest,
- ◆ Annually file a simplified registration in its home state(s),
- ◆ When conducting business in other states, file a copy of the home-state registration,
- ◆ Maintain simplified books and records related to these activities, (no audited financial statements)

The proposed regulations would prohibit:

- ◆ Conduct that is fraudulent, unlawful, or unethical under today's professional standards,
- ◆ Any involvement with raising capital to invest in or buy a business,
- ◆ Any holding, handling, or possessing the parties' funds or securities,
- ◆ Discretionary authority to close a transaction on behalf of client.

AM&AA has already completed most of the heavy lifting on this initiative, since retaining Attorneys Hugh Makens and Shane Hansen and their firm, Warner, Norcross & Judd in late August 2006. Copies of the specific proposal and additional detailed background information is available on AM&AA's website at: <http://www.amaaonline.com/advocacy>.

Third, working in close collaboration with IBBA, we have developed and fully support the adoption of federal and state rules codifying the CBI No-Action letter issued by the SEC to Country Business, Inc., on November 8, 2006, thus creating a well-defined, limited exemption from federal and state broker-dealer registration and regulation for Main Street business brokers when a transaction starts as an asset sale but is closed as a stock sale.

This proposed rule is labeled: The Small Business Sale Transaction Exemption, and was included as part of the updated and revised MAB proposal which was jointly presented to the SEC senior staff and the NASAA Special Project on Finders on April 1, 2008.

The MAB Proposal has been one of the top recommendations from participants in the 2006, 2007, and 2008 Forums for Small Business Capital Formation, hosted annually by the SEC. The PPB proposal has been a top recommendation of these and prior SEC Forums.

The SEC staff has been actively working on the PPB, MAB and Small Business Sale Transaction Exemption proposals, including the extensive analysis and background research that, by law, is required to support the SEC's rulemaking process. The SEC staff has been discussing the proposals with state securities regulators through representatives of NASAA. We understand that the SEC staff are nearing completion of their internal analysis of these proposals and, when appropriate, are ready to advance these proposals to the full Securities and Exchange Commission. Early in 2010, we expect to meet with high ranking officials of

the SEC to advance our proposal with a goal of concluding the rulemaking process in mid 2010.

For a more complete comparison of the proposed restrictions and regulatory requirements for a Private Placement Broker (PPB) and a registered M&A Broker (MAB) vis a vis a full service FINRA broker-dealer and a main street business broker operating under the CBI and International Business Exchange Corporation (IBEC) No Action Letters, visit the AM&AA's website: <http://www.amaaonline.com/advocacy>.

Where Do We Go From Here?

Our view for the future is strongly optimistic. We see that:

- ◆ This issue is clearly receiving significant attention at both the federal and state regulatory levels, as well as in the legal and business press.*
- ◆ There is a growing understanding of the importance and contribution of M&A advisor/intermediary activities to small businesses owners and the US economy overall.*
- ◆ In turn, there is a growing understanding of the need to bring order and clarity to this area of economic activity, while keeping these services affordable for small business owners.*
- ◆ Now, more than ever, there is a regulatory environment and willingness to consider new rulemaking in this area in a coordinated effort between state and federal regulators.*

Nonetheless, the process for public consideration and adoption of these proposals will likely take many more months at the federal level (SEC), and then some months within the NASAA, and finally within each state. The process of regulatory change is inherently slow, and these proposals will require action both federally and, after NASAA makes its recommendations, on a state by state basis.

Your continued support is critical to this effort. For now, we would urge all members of the profession to consult with your own legal advisors about how best to position your firm today and in the future for the scope of M&A services you provide.

If you have any questions about how you can contribute to this effort, financially or by volunteering your time and resources, please do not hesitate to contact any one of the following members of the Licensure Task Force:

Mike Ertel, Co-Chair, 888.864.6610, mikeertel@legacyadvisorsgroup.com

Jim Cornell, Co-Chair, (716) 675-6001 x 223, cornelljim@praxiis.com

Partial List of Sponsors

- *Alliance of Merger & Acquisition Advisors (AM&AA)*
- *International Network of M&A Partners (IMAP)*
- *Alliance for Corporate Wealth (ACW)*
- *Midwest Business Brokers & Intermediaries (MBBI)*
- *International Business Brokers Association (IBBA)*
- *M&A Source*
- *Business Brokers of Florida (BBF)*
- *Colorado Association of Business Intermediaries (CABI)*
- *Mid Atlantic Business Intermediaries Association (MABIA)*
- *Texas Association of Business Brokers (TABB)*
- *California Association of Business Brokers (CABB)*
- *Institute of Certified Business Counselors (ICBC)*
- *Georgia Association of Business Brokers (GABB)*
- *Numerous Individuals and Firms*

(see AM&AA website www.amaaonline.com/advocacy for complete list)