

AM&AA Licensure Task Force
Position Statement & Summary of Key Activities

After careful study 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 AM&AA has concluded that there is an urgent need to clarify and, if possible, simplify this situation for the greater benefit of its members and the profession; for 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.

To this end, the AM&AA is fully supportive of two, separate but related initiatives:

First, AM&AA fully supports the adoption of a new class of Private Placement Broker (PPB), as recommended by the ABA Task Force, that is expected to enable M&A 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,
- ◆ Operate in a simplified regulated environment with a lower setup cost and at a lower annual operating cost each year, and
- ◆ Share fees with other registered broker-dealers.

In reality, 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 current PPB proposal, and submit their study and recommendation to the Securities and Exchange Commission (SEC) and North American Securities Administrators Association (NASAA). The ABA Task Force's whitepaper can be obtained from the AM&AA's website at: <http://www.amaaonline.org/docs/ABATaskForceReport%201-04-07.pdf>.

What remains to be done on this initiative is: (1) Communicate 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 the Financial Industry Regulatory Authority ("FINRA" f/k/a NASD), consistent with the original ABA Task Force recommendation, and (3) Coordinate with the ABA Task Force as required on any revisions/changes to their 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 M&AB proposal), which would allow an M&A firm to:

- ◆ 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,

The proposed regulations would prohibit:

- ◆ Conduct that is fraudulent, unlawful, or unethical under today's professional standards,
- ◆ Discretionary authority to close a transaction on behalf of client,
- ◆ Any involvement with raising capital to invest in or buy a business, and

- ◆ *Any holding, handling, or possessing the parties' funds or securities.*

AM&AA has done most of the heavy lifting on this initiative ourselves, since the proposal did not exist at the time we undertook this initiative. However, since retaining Hugh Makens and Shane Hansen and their firm, Warner, Norcross & Judd in late August 2006, we have accomplished a lot in just over a year's time. Our steps and accomplishments have included, among other things:

- (1) Opened an active and on-going dialog about our M&AB proposal with the SEC staff and state securities regulators through their association, NASAA.*
- (2) Completed drafting of a comprehensive concept outline for a proposed system of limited state registration and regulation for small and middle market M&A advisors and intermediaries, including an exemption from SEC broker-dealer registration and from FINRA membership.*
- (3) Recorded our full support for the ABA PPB proposal and presented our concept of a registered M&A Broker at the 2006 SEC Forum for Small Business Capital Formation, Washington, DC on September 29, 2006; this was a top-ranked recommendation from the Forum's participants to the SEC.*
- (4) Received initial expression of support with a significant pledge of financial support from IMAP.*
- (5) Returned to Washington, DC for a private meeting with the senior SEC staff, with responsibility for drafting new regulation in this area to discuss and answer their questions regarding both proposals, and incorporate their suggestions.*
- (6) Presented the AM&AA concept of a registered M&A Broker to the chair of NASAA's Special Project Group on "Finders."*
- (7) Developed a legal analysis of the principal pluses and minuses of the SEC's No Action Letter to Country Business, Inc., (CBI) as it relates to middle market M&A transactions.*
- (8) Developed a matrix highlighting the allowed activities, restrictions and regulatory requirements for a private placement broker and a M&A broker vis a vis a full service NASD broker-dealer and a main street business broker operating under the CBI and International Business Exchange Corporation (IBEC) No Action Letters, which has been provided to the SEC senior staff and to the chair of NASAA's Special Project Group on Finders.*
- (9) Met with the Colorado Securities Commissioner and his senior staff, who agree with the need to take action in this area and with the approach of working through NASAA to finalize these proposals and support them.*
- (10) Conferred with the ABA Private Placement Broker Task Force to confirm they understood and were in agreement with our registered MAB proposal and see it as complementary and not in any way threatening to their own PPB proposal.*
- (11) Completed an initial briefing for AICPA leadership council on these proposals, on April 5, 2006,*
- (12) Accepted invitations for follow-up meetings with the full NASAA Special Project Group on Finders which was held on May 7, 2007, along with a face-to-face follow-up meeting with the SEC senior staff on Wednesday, May 9, 2007, in Washington, DC, to discuss next steps regarding both of these proposals.*
- (13) Hosted SEC Staff and members of NASAA's Special Project Group on Finders at a day-long industry-wide program on the role & activities of M&A intermediaries in facilitating the transfer of on-going businesses, which was held in Chicago on July 11, 2007, with Kristina Fausti attending on behalf of the SEC, and Tanya Solov (Chair, and IL Securities Commissioner), and Denny Crawford (Member, and TX Securities Commissioner), attending on behalf of NASAA's Special Project Group on Finders. Presenting on behalf of the profession were: Jim Cornell (AM&AA, ICBC), Mike Adhikari (AM&AA, IBBA, M&A Source, ACG, MBBI), John Zayac (IBBA, M&A Source, AM&AA, CABI), John Johnson (IBBA, M&A Source), Mark Esbeck (IMAP, ACG), Linda Purcell (IBBA, M&A Source), Mike Nall (AM&AA), Bill Glastris (Prospect Partners), and Richard Jackim (The \$10 Trillion Opportunity). Many other leaders within our profession also attended and participated in the discussions.*
- (14) Assembled and organized extensive briefing materials for state and federal regulators regarding the nature and scope of our professional activities when assisting our clients, which was presented at the Chicago 7/11 meeting and later updated, expanded, and presented to the SEC and NASAA representatives.*
- (15) Researched and drafted a proposed SEC rule under federal securities laws and a proposed model state rule under state securities laws, including an explanation of the need for a simplified system of registration and regulation for M&A brokers and intermediaries.*
- (16) Presented our proposed SEC M&AB rule proposal and reiterated our full support for the ABA PPB proposal at the 2007 SEC Forum for Small Business Capital Formation in Washington, DC on September 24, 2007, with Kristina Fausti and Josh Kans on the panel representing the SEC. Speaking on behalf of*

the profession were: Jim Cornell (AM&AA, ICBC), John Johnson (IBBA, M&A Source), John Zayac (IBBA, M&A Source, AM&AA, CABI), Mike Adhikari (AM&AA, IBBA, M&A Source, ACG, MBBI), Todd Cushing (MBBI, IBBA), Mike Ertel (AM&AA, IBBA, M&A Source, BBF), Ron Rudich (AM&AA, MABIA), and Pierre Villere (AM&AA). During the break out session on Finders, M&A Brokers and Private Placement Brokers, we received confirmation from the SEC representatives that both the PPB and MAB proposals are now under active consideration by the SEC staff.

- (17) Met with the entire NASAA Special Project Group to present and discuss these initiatives on Sunday, Sept 30th, at NASAA's Fall Conference in Seattle, where Hugh Makens & Shane Hansen reiterated our support for the ABA PPB proposal, presented our proposed model rule for the states that would dovetail with the SEC version. It is worth noting that Kristina Fausti made a special trip to Seattle to represent the SEC at this meeting and discuss the SEC's views with state securities regulators. This is very encouraging because cooperation between the SEC and NASAA is critical to the adoption of a coordinated system of regulation for M&A brokers. Ms. Fausti's time and travel expenses incurred for both NASAA's Seattle meeting and our 7/11/08 meeting in Chicago also show the SEC's interest in achieving a solution to these long-standing regulatory issues.
- (18) Raised ~\$120,000 in cash & pledges to date from individuals, firms and professional associations in support of these initiatives, primarily by word of mouth and WITHOUT any formal, focused, fund-raising campaign.
- (19) Received initial financial contributions from BBF, CABI, CABB, IBBA, IMAP, MABIA, MBBI, TABB, and ICBC, with suggestion that we could expect more financial support as needed in the future.
- (20) In September 2007, received strong letters of support from BBF, CABI, CABB, IBBA, IMAP, MABIA, MBBI, TABB, and M&A Source which were forwarded to the senior staff at the SEC, as well as the Chair of NASAA's Special Project Group on Finders.
- (21) In October 2007, AM&AA's legal counsel conferred by phone with two senior attorneys from the SEC's Division of Investment Management with questions/suggestions regarding portions of our proposed M&AB rule which they had been asked to review by the SEC's Division of Market Regulation, confirming that our M&AB proposal is being actively discussed by senior staff within the various divisions of the SEC.
- (22) MBBI has planned a panel discussion of current M&A intermediary licensure issues for its annual winter conference in Chicago on January 25, 2008, and both Kristina Fausti, SEC, and Tanya Solov, NASAA representative (and Illinois Securities Commissioner) have agreed to participate on a securities regulation panel.

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

- ◆ This issue is clearly beginning to receive a lot of attention at both the federal and state levels, as well as in the business press.
- ◆ There is a growing understanding of the importance and contribution of M&A. advisor/intermediary activities to smaller businesses 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.
- ◆ Because of the spectrum and overlap of a different intermediaries' activities, it makes sense for both federal and state regulators to consider the PPB proposal and the M&AB proposal at the same time, with the possibility of public rulemaking proposals within the next 6 -12 months.

Nonetheless, the adoption of the PPB proposal and/or the M&AB proposal will likely take many more months at the federal level (SEC) and then each of the states, with the state level activity quite possibly stretching into 2-3 years. 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.

Having taken a leadership role to this point on this critically important issue, AM&AA is committed to staying the course and maintaining the focus and momentum on both of these initiatives until both have been accomplished. Your support and involvement through AM&AA or other professional associations can help to guide this rulemaking process and make this proposal a reality for the benefit of the profession and the public!