

**What Business Brokers and M&A Advisors
Need to Know About:
The Campaign for Clarity, and
HR 686 and S 1010**

**AM&AA Winter Conference
Orlando, FL
January 14, 2016**


AM&AA[®]
ALLIANCE OF MERGER AND ACQUISITION ADVISORS



Today's Panelists

- **Mike Ertel, Co-Chair, AM&AA's Campaign for Clarity**
- **Mike Adhikari, AM&AA President**

Of Counsel: Shane Hansen, Partner & Co-Chair, Broker-Dealer and Investment Adviser Practice Group, Warner Norcross & Judd



**HR 686 and S 1010,
The Small Business Mergers, Acquisitions,
Sales, and Brokerage Simplification Act**

- **Background & Recent Developments**
- **Highlights of HR 686 and S 1010**
- **Answering Your Questions**
- **Next Steps**



PART I

Background & Recent Developments

The Inconvenient Truth...

Under current federal & state securities laws...

- The sale of a business is always a securities transaction if...
 - It is a “stock” sale vs an “asset” sale;
 - It involves an exchange or issuance of stock in a merger;
 - It involves the issuance or exchange of stock for assets;
 - It involves the sale of stock to an ESOP.
 - It involves a fractional interest in the business.
- The sale of a business is arguably a securities transaction if...
 - It involves an earn-out.
 - It involves a “Seller’s Note.”

SEC's Broker-Dealer Guide says...

Registration is required by finders, business brokers, and others engaged in these activities:

- Finding buyers and sellers of businesses (i.e., activities relating to mergers and acquisitions where securities are involved);
- Finding investors for “issuers” (entities issuing securities), even in a “consultant” capacity;

(<http://www.sec.gov/divisions/marketreg/bdguide.htm>).

For 10+ years, AM&AA and several other, leading national and regional professional associations have been working to clarify – and hopefully, simplify – when these laws apply to business sales and intermediaries

- 2005 – ABA Broker-Dealer Lite**
- 2006 – CBI No Action Letter**
- 2006 – 2012 – M&A Broker Proposal**
- 2013 – 2014 HR 2274 /S 1923, The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2013**
- 2014 – SEC M&A Broker No Action Letter**
- 2015 – 2016 HR 686 /S 1010, The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2015**

Campaign for Clarity Task Force



- **Mike Adhikari (AM&AA)**
- **Jim Cornell (AM&AA)**
- **Mike Ertel (AM&AA)**
- **Robert Gurrola (IBBA, M&A Source, AM&AA)**
- **John C Johnson (IBBA, M&A Source)**
- **Ray Kolak (MBBA)**
- **Christina Melendes (ACG)**
- **Mike Nall (AM&AA)**
- **Linda Purcell (IBBA, M&A Source)**
- **Brian Wendler (ICBC)**
- **John Zayac (IBBA, M&A Source)**

Partial List of Supporting Organizations National & International

Alliance of Merger & Acquisition Advisors (AM&AA)
Association for Corporate Growth (ACG)
Institute of Certified Business Counselors (ICBC)
International Business Brokers Association (IBBA)
M&A Source (MAS)
Mid Market Alliance (MMA)
Small Business Investor Alliance (SBIA)
National Association of Media Brokers (NAMMB)

Partial List of Supporting Organizations

Regional & Local

Midwest Business Brokers & Intermediaries (MBBI)
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)
Arizona Business Brokers Association (AZBBA)
Georgia Association of Business Brokers (GABB)
Michigan Business Brokers Association (MBBA)
Nevada Business Brokers Association (NBBA)
Carolinas Virginia Business Brokers Association (CVBBA)
New England Business Brokers Association (NEBBA)
Pennsylvania Business Brokers Association (PBBA)

Summary of Recent Developments

- 11/14/13 – House Financial Services Committee votes 57-0 to pass HR 2274 as amended
- 1/14/14 – HR 2274 passes the full House by a vote of 422-0
- 1/14/14 – S 1923 introduced in the US Senate
- 1/28/14 – SEC issues M&A Broker No Action Letter
- 1/14/15 – HR 37 passes full House by a vote of 271-154
- 1/15/15 – NASAA publishes proposed model state rule based on HR 2274 and requests public comment.
- 2/5/15 – HR 686 is introduced in the US House
- 4/20/15 – Companion bill, S 1010, is introduced in the US Senate
- 5/20/15 – HR 686 is voted favorably out of the HFSC, to be acted on by the full House



PART II

Highlights of HR 686 and S 1010

HR 686 and S 1010 would...

- Create a limited exemption from SEC registration and from membership in and regulation by FINRA for persons who facilitate the sale of small, privately held businesses, regardless of deal structure, provided these registered “M&A Brokers” ...
 - Do NOT raise capital,
 - Do NOT hold funds or securities, and
 - Do NOT invest funds for the accounts of others
- Anti-fraud prohibitions would continue to apply

Other Limitations –

An “*Eligible Privately Held Company*” (i.e., the target company) must:

- Have no class of publicly registered securities; and
- In its last year-end financial statements or tax return show either or both:
 - EBITDA of less than \$25,000,000; and/or
 - Gross revenues of less than \$250,000,000.

Other Limitations – (cont'd)

“Control” means the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

There is a *presumption of control* for any person who—

- Is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);**
- Has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or**
- In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital**



PART III

Answering Your Questions



PART IV

Next Steps

Next Steps for HR 686 and S 1010



- We need as many US Representatives as possible – from both sides of the aisle – to urge prompt action on this bill and support passage of this bill on the floor of the US House.
- Likewise, we need more US Senators - from both sides of the aisle - to co-sponsor the Senate version of this bill and urge prompt passage of this bill by the US Senate.

What Can I Do Now?

- 1. Reach out to your US Representative and Senators and ask them to co-sponsor /vote for these bills**
- 2. Contribute your fair share**
- 3. Encourage others to:**
 - Reach out to their US Representative and Senators, and**
 - Contribute their fair share**

Reaching Out to your US Representative and Senators is EASY!

1. Go to this website:

<http://alliance-of-merger-and-acquisition-advisors.rallycongress.com/17602/support-hr-686-small-business-mergers-acquisitions-sales-brokerag/>

2. Enter your zip code

This website will determine who your US Representative and your US Senators are, and will email /mail them a prepared message, urging them to co-sponsor /support HR 686 and S 1010.

All Right, You've Convinced Me. What Should I Do TODAY?

- Choose your level of support and make your credit card/
check/ pledge for your fair share TODAY
 - 2% Club Sponsor – 2% of Gross Success Fees**
 - 50% Club Sponsor – 50% of Out-of-Pocket Savings**
 - 20,000 Club Sponsor - \$20,000+**
 - 10,000 Club Sponsor – \$10,000 - \$19,999**
 - 5000 Club Sponsor – \$5,000 - \$9,999**
 - 2500 Club Sponsor – \$2,500 - \$4,999**
 - 1000 Club Sponsor – \$1,000 - \$2,499**

AM&AA Campaign for Clarity Pledge Card

- *Yes, I want to support AMAA's Campaign for Clarity*
 - Please accept my enclosed contribution for \$_____.
 - Please accept my pledge for \$_____ to be paid on or before _____, 20__.
 - Please accept my pledge for \$_____ to be paid from my proceeds of my next closing.

Signature

Date

Make Your Contribution/ Pledge TODAY

- ***Make Your Contribution/ Pledge Payable to:
Campaign for Clarity***
- ***Hand your Contribution/ Pledge Card to an AM&AA staff member TODAY***
- ***Mail Your Contribution/ Pledge Card to:
Campaign for Clarity
c/o AMAA
222 N. LaSalle Street, Suite 300
Chicago, IL 60601***

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Contact Information

If you have questions about how to contribute financially, or with your time and resources, contact:

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Other Resources

For more detailed information and for the latest updates visit these websites:

www.amaaonline.org/advocacy