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POLICY STATEMENT REGARDING REGISTRATION OF M&A BROKERS UNDER THE ALABAMA SECURITIES ACT

The Alabama Securities Commission ("the Commission") sets forth this Statement of Policy regarding the registration of M&A Brokers under the Alabama Securities Act, as amended, ("Act") and the Alabama Securities Commission Administrative Code Rules ("Rules") promulgated pursuant to the Act, Section 8-6-23, Code of Alabama (1975). This Statement of Policy is intended to promote uniformity and consistency for regulatory compliance and reduce the regulatory burdens for brokers who limit their services to smaller M&A transactions involving private companies.

I. Preliminary Definitions

Merger and Acquisition Broker: For purposes of this Statement of Policy, "M&A Broker" means any broker dealer and any person associated with a broker dealer engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker dealer acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company,

a. if the broker dealer reasonably believes that upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

b. if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate

the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

II. Background

Like Alabama, federal law requires any person who engages in the business of effecting securities transactions to register as a broker dealer unless the person qualifies for an exemption from registration[1].

In 2014, SEC staff issued a "no action" letter (2014 NAL) that enabled certain brokers who limit their services to M&A transactions involving private companies to avoid broker dealer registration with the SEC. The 2014 NAL did not preempt state laws regarding broker registration. The North American Securities Administrators Association ("NASAA"), issued a Model Rule Exempting Certain Merger & Acquisition Brokers ("M&A Brokers") From Registration (the "Model Rule") in September 2015, which largely but not completely aligned with the 2014 NAL.

In 2022, Congress passed legislation that modified Section 15(b) of the Securities Exchange Act of 1934 ("the Exchange Act") to statutorily exempt M&A Brokers from federal registration with the SEC. The new statutory exemption went into effect in 2023. In 2024, NASAA adopted amendments to its Model Rule by revising it to achieve uniformity with the new federal law.

Section 8-6-23, Code of Alabama (1975) provides that the Commission "may make, amend and rescind such rules and prescribe such forms as are necessary and desirable to carry out the provisions" of the Act, where the Commission finds that the action is "necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions" of the Act. In prescribing such rules the Commission may cooperate with the securities administrators of the other states and the SEC "with a view to effectuating the policy of [the Act] to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable". Id. Accordingly, where guidance from the SEC or NASAA aligns with the purposes intended by the policy and provisions of the Act, the Commission will consider such guidance in its rulemaking and policy formation.[2]

The Commission determines that the Model Rule promulgated by NASAA aligns with the purposes of the Act and is appropriate in the public interest.

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[1] Section 8-6-3, Code of Alabama (1975); 15 U.S.C § 78o.

[2] *See, generally*, Section 8-6-23, Code of Alabama (1975).

III. Statement of Policy

The Commission is working to promulgate a Rule which will provide for a limited exemption from registration for M&A Brokers, which will include provisions that are substantially similar to those contained in the NASAA Model Rule. Until such new rule is finalized through the administrative rulemaking process, the Commission will not take or recommend enforcement actions against M&A Brokers who meet the qualifications, definitions, and conditions set forth under the NASAA Model Rule, published below.

Dated this the 19th day of December, 2025.

ALABAMA SECURITIES COMMISSION
445 Dexter Avenue, Suite 12000
Montgomery, AL 36104

Amanda L. Senn
Director

Model Rule Exempting Certain Merger & Acquisition Brokers ("M&A Brokers") From Registration

(Adopted September 29, 2015; Amended May 6, 2024)

Rule _____. Registration exemption for Merger and Acquisition Brokers

(A) IN GENERAL – Except as provided in paragraphs (B) and (C), a Merger and Acquisition Broker shall be exempt from registration pursuant to _____ under this section.

(B) EXCLUDED ACTIVITIES – A Merger and Acquisition Broker is not exempt from registration under this paragraph if such broker does any of the following:

(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction.

(ii) Engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15 subsection (d), 15 U.S.C. 78o(d).

(iii) Engages on behalf of any party in a transaction involving a shell company, other than a business combination related shell company.

(iv) Directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company.

(v) Assists any party to obtain financing from an unaffiliated third party without –

(I) complying with all other applicable laws in connection with such assistance, including, if applicable, Regulation T (12 C.F.R. 220 *et seq.*); and

(II) disclosing any compensation in writing to the party.

(vi) Represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.

(vii) Facilitates a transaction with a group of buyers formed with the assistance of the Merger and Acquisition Broker to acquire the eligible privately held company.

(viii) Engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers.

(ix) Binds a party to a transfer of ownership of an eligible privately held company.

(C) DISQUALIFICATIONS – A Merger and Acquisition Broker is not exempt from registration under this paragraph if such broker is subject to (and if and as applicable, including any officer, director, member, manager, partner, or employee of such broker) –

(i) Has been barred from association with a broker or dealer by the Commission, any State, or any self-regulatory organization; or

(ii) Is suspended from association with a broker or dealer.

(D) RULE OF CONSTRUCTION – Nothing in this paragraph shall be construed to limit any other authority of this _____ (Commission, Agency) to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

(E) DEFINITIONS – In this paragraph:

(i) BUSINESS COMBINATION RELATED SHELL COMPANY. The term "Business Combination Related Shell Company" means a shell company that is formed by an entity that is not a shell company –

(I) solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(II) solely for the purpose of completing a business combination transaction (as defined under Section 230.165(f) of title 17, Code of Federal Regulations) among one or more entities other than the company itself, none of which is a shell company.

(ii) CONTROL. The term "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 if, upon completion of a transaction, the buyer or group of buyers –

(I) has the right to vote 25 percent or more of a class of voting securities or the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(II) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

(iii) ELIGIBLE PRIVATELY HELD COMPANY. The term "Eligible Privately Held Company" means a privately held company that meets both of the following conditions:

(I) The company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d).

(II) In the fiscal year ending immediately before the fiscal year in which the services of the Merger and Acquisition Broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

(aa) The earnings of the company before interest, taxes, depreciation, and amortization are less than $25,000,000.

(bb) The gross revenues of the company are less than $250,000,000.

For purposes of this subclause, the _____ (Commission, Agency) may by rule modify the dollar figures if the _____ (Commission, Agency) determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.

(iv) MERGER AND ACQUISITION BROKER. The term "Merger and Acquisition Broker" means a broker, and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company if the broker reasonably believes that –

(I) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert –

(aa) will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

(bb) directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and with the assets of the eligible privately held company, including without limitation, for example, by –

(AA) electing executive officers;

(BB) approving the annual budget;

(CC) serving as an executive or other executive manager; or

(DD) carrying out such other activities as ____ (Commission, Agency) may, by rule, determine to be in the public interest; and

(II) if any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, a balance sheet dated not more than 120 days before the date of the offer, and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

(v) SHELL COMPANY. The term "Shell Company" means a company that at the time of a transaction with an eligible privately held company –

(I) has no or nominal operations; and

(II) has –

(aa) no or nominal assets;

(bb) assets consisting solely of cash and cash equivalents; or

(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

(F) INFLATION ADJUSTMENT

(i) IN GENERAL – On the date that is five years after the date of the enactment of the rule, and every five years thereafter, each dollar amount in subparagraph (E)(iii)(II) shall be adjusted by –

(I) dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

(II) multiplying such dollar amount by the quotient obtained under sub clause (I).

(ii) ROUNDING – Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of $100,000.