



SOUTHEAST BUSINESS EXCHANGE

9605-A Caldwell Commons Circle
Cornelius, NC 28081
Main 704-439-2510 • Fax 704-439-2511

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OFFICE OF THE SECRETARY

October 5, 2010

Ms. Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Securities Licensing/Registration Exemption for Main Street Business Brokers/Intermediaries

Dear Ms. Schapiro:

I am a Director and former VP of the Carolinas-Virginia Business Brokers Association and on behalf of our membership and the non-member Business Brokers in North Carolina, South Carolina and Virginia, I would like to request your consideration of the need to exempt main street business brokers and intermediaries from securities licensing and registration.

Business Brokers and intermediaries across the country do not normally register nor do they have a securities license-**nor should they**, given the nature of their activities. The cost to regulate or even register business brokers will be burdensome, costly to the regulator and to the Business Broker/Intermediary, and be unnecessary. It would be helpful if you could issue an explicit exemption to clarify and codify the current practices of main street business brokers/intermediaries.

Our membership and affiliation with over 300 business brokers also supports the letter of Jonathan M. (Mike) Miller dated October 19, 2009, and the MEMO of attorney John C. Willems to the TABB, Inc. Board of Directors dated August 11th, 2009 advocating for a securities registration/licensing exemption for main street business brokers and Intermediaries.

Further, we support the Securities Transfer Exemption Parameters that were attached to Mr. Miller's letter and are also attached to this letter. Please help small business owners and buyers by formulating a rule adopting the attached Securities Transfer Exemption Parameters for Main Street Business Brokers and Intermediaries.

Sincerely yours,

Reed Law, Director CVBBA
President, Southeast Business Exchange

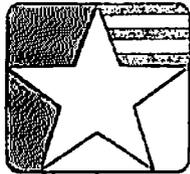
Enclosures
CC: Kathleen L. Casey
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
Elisse B. Walter, Luis A. Aquilar, Troy A. Paredes

SECURITIES TRANSFER EXEMPTION PARAMETERS FOR MAIN STREET BUSINESS BROKERS

In accordance with the parameters set out by the U.S. Securities and Exchange Commission's Private Letter Rulings issued to International Business Exchange Corporation on December 12, 1986 and to Country Business, Inc. on November 8, 2006, under the reasoning in Vero Group v. ISS Service System, et al, 971 Fed 2d 1178 (1992) and the cases in line with Vero and Star Supply Company v. Jones, 665 SW2d 194 (1984), the following acts should be codified to form the basis of a federal exemption relative to securities licensing or registration of main street business brokers when those business brokers are involved in the sale of a business that results in a securities transaction:

The permitted activities of the business broker under the exemption are proposed as follows:

1. In marketing a business, the business broker will only advertise to potential buyers that the "business" is for sale.
2. The business broker will not advise either the buyer or seller that the transaction be completed via a sale or purchase of securities.
3. If the decision is made to conclude the sale of the business via a sale of securities, it will be made by the buyer and seller or their advisors without the business broker's advice.
4. After the time, if any, the decision is made that the sale transaction will be a securities sale the business broker will then have a limited role in the negotiations between or among the parties and will merely facilitate the transmittal of information or documents between the buyer and seller, or their advisors.
5. In no event will the business broker have the authority to make binding agreements on behalf of any party to a securities transaction.
6. The business broker will not assess the value of any security or equity interest to be sold, but may assess the total value of the assets or the business to be sold as a going concern.
7. The business broker won't be involved in the formation or set up of buyer or the buyer group.
8. The business broker will not assist the buyer in obtaining financing.
9. However, the business broker may provide uncompensated introductions to lending sources that the buyer may consider for the transaction. The business broker may help in completing the paperwork associated with loan applications for buyer in order to assist in completing transaction.
10. The compensation to be paid to the business broker will not change regardless of the manner in which the sale is concluded (whether asset sale or the sale of securities).
11. In no event will the business broker accept any equity securities as compensation if the sale results in the sale of the equity in the business (a securities transaction).
12. The business broker will always advise potential buyers that the business broker does not and will not verify the information given to the business broker about the business.
13. The business broker will also advise potential buyers that business broker doesn't make any representation about the accuracy of the information provided regarding any aspect of business.
14. The business sold will not be a "shell" entity.
15. The business broker will not handle the transfer of funds from a buyer to a seller, but may accept earnest money from a buyer for deposit with a third party escrow agent.
16. The business broker will always be subject to the anti-fraud provisions of all securities acts of the United States.
17. The size of the entity being sold would not matter as long as the sale was from an owner operator to an owner operator or to a "Qualified Investor" as that term is defined in the Securities Acts.



TABB, INC.
TEXAS ASSOCIATION
OF BUSINESS BROKERS

October 19, 2009

Ms. Mary Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Securities Licensing/Registration Exemption for Main Street Business Brokers

Dear Ms. Schapiro:

Presently there is debate and confusion as to whether the activities of "main street business brokers" require a securities license or registration on a state and/or federal level to collect a fee for their services. "Main street business brokers" are those business brokers who market and facilitate the transfers of small businesses from one owner-operator to another owner-operator or to a qualified investor following the criteria stated in SEC's Private Letter Rulings described in numbered paragraph 1 below. The vast majority of these business transfers are asset sales. Main street business brokers provide an essential service to the small business community in the transfer of on-going businesses, which preserves jobs and the continuity of providing goods and services to consumers.

Because of this and because of the support the SEC and the courts have expressed with respect to the matter, the TABB, Inc. d/b/a the Texas Association of Business Brokers actively advocates for a codification of activities already deemed permissible by the SEC and many courts that would constitute a federal and state exemption for main street business brokers so that they may legally collect a fee relating to a sale of a business via securities without any sort of state or federal licensing or registration requirements.

There is considerable support from the U.S. Securities and Exchange Commission (the "SEC") and the courts which would lend itself to a codification of this statutory "exemption" we propose. That support is summed up as follows:

1. The SEC has already, on two occasions, with a consistent voice approved what activities main street business brokers may perform without the necessity of registration or licensing. Those activities are described in the Private Letter Rulings ("PLR's") issued by the SEC to International Business Exchange Corporation on December 12, 1986 and some twenty years later to Country Business, Inc. on November 8, 2006.
2. The reasoning that lead to the holding in Vero Group v. ISS Service System, et al providing that a finder/business broker does not need a license or registration to collect a brokerage fee recognized the difference between applying the "economic reality" and the "sale of business" doctrines to a securities fraud case versus applying those doctrines to a finder/brokerage case in which the sale was from and owner operator to an owner operator, rather than an investment of money in a common enterprise with profits to come solely from the efforts of others.

Effective November 2, 2009, amendments to NASD Rules 1022 and 1032 require certain individuals to pass the new Limited Representative – Investment Banking Qualification Examination (Series 79 Exam). This Series 79 Exam requirement does not apply to main street business brokers but specifically applies to individuals affiliated with FINRA member firms whose activities are limited to investment banking and principals who supervise such activities. However, the SEC's Division of Trading and Markets (the "Division") is presently considering a Federal registration exemption and simplified system of regulation for merger and acquisition intermediaries. This consideration is based on the Alliance of Merger & Acquisition Advisors ("AM&AA") letter to the Division.

The most recent Proposed Model State Rules of M&A Brokers and Small Business Sales advocated by AM&AA advocates for both the following:

(i) a federal and state M&A Broker proposed rules for those who want to be able to provide services beyond those allowed in the IBEC and CBI PLR's, such as raising private equity capital and seeking to put investor groups together to buy businesses, and

(ii) a federal and state exemption from licensing or registration for main street business brokers who deal in small business sale transactions in accordance with the IBEC and CBI PLR's.

The exemption for main street business brokers who deal in small business sale transactions is crucial to the profession and the business owners they serve. The cost to obtain and comply with federal and state licensing or regulation would be prohibitive for main street business brokers who are selling restaurants, dry cleaners, and other small businesses which upon an occasion involves selling the stock of the business rather than just its assets. All of these businesses fall within the definition of a small business, as defined by the U.S. Department of Commerce and the Small-Business Administration.

Industry studies reflect that there are approximately 130,000 business sale transactions per year in the U.S. of which only 4,000 transactions involve businesses valued at \$1 million or more. Less than 15% of these transactions involve the sale of privately held securities. Furthermore, business brokers handle only about 35% to 40% of these transactions. Many of these transactions are handled directly between Buyers and Sellers, sometimes with the help of their accountants and attorneys. Business brokerage is a very small profession with less than 3,500 companies in the U.S. calling themselves business brokers. Litigation with business brokers for violations of public trust have been few and rarely get to the level of the federal court system. The cost to regulate or even register business brokers will far and away exceed any reasonable public benefit. Codification of an exemption for main street business brokers will clarify practices permitted by main street business brokers and would benefit the public.

In support of our position on this matter, enclosed is a summary of the PLR's and judicial rulings relating to the issue that has been compiled by the Texas Association of Business Brokers' General Counsel, John C. Willems, III. Mr. Willems' memo traces the support that the SEC and the courts have given to the statutory exemption we propose and summarizes the activities which main street business brokers may engage in order to qualify for this exemption.

As a member of the U.S. Securities and Exchange Commission, we hope that you will support the Texas Association of Business Brokers' position for a federal and state exemption to be codified adopting the parameters of the SEC's PLR's to IBEC and CBI relative to state and federal licensing or registration of main street business brokers.

Respectfully,
Tabb, Inc.



By:
John M. Miller, President

Enclosures

CC: Kathleen L. Casey
Elisse B. Walter
Luis A. Aquilar
Troy A. Paredes

**ARGUMENTS IN FAVOR OF SEC EXEMPTION
TO LICENSING FOR MAIN STREET BUSINESS BROKERS**

1. In his opening remarks to the 2008 SEC Government-Business Forum on Small Business Capital Formation, the chairman of the SEC, Christopher Cox said:
 - “Small firm’s represent . . . 99.7% of all the employer firms in the United States. They employ half of the entire labor force in the private sector.”
 - “Of all the net new jobs created in our country, small business generated between 60 percent and 80 percent in every year during the last decade.”
 - “[S]mall business makes up 97 percent of all identified exporters. It produces over 28 percent of the nation’s entire export value.”
 - “[S]mall business employs over 40 percent of all the high-tech workers in the United States.”
2. In light of the remarks of SEC’s Chairman, Christopher Cox, in his opening remarks to the 2008 SEC Government-Business Forum on Small Business Capital Formation stressing the importance of small business in the United States, it is equally important to address the importance of those in the business brokerage industry who assist small business owners in transferring their businesses and the wealth those businesses represent.
3. An SEC Rule or the codification of activities already deemed permissible by the SEC and many courts that would constitute a federal exemption for main street business brokers is needed.
4. Main street business brokers involved in a sale of a business via a securities sale should be permitted so that they may collect a fee without any sort of state or federal licensing or registration requirements.
5. Collecting a commission on a business that is listed, marketed and sold as an asset sale is legal and should not be illegal just because some attorney or accountant recommends that the final form of the transaction be a stock sale.
6. It is patently unfair for a main street business broker to legally collect a fee regarding the sale of a business entity via an asset sale when it is illegal to collect a fee just because the form of the transaction morphs to a stock sale.
7. The “economic reality test” as espoused by the United States Supreme Court in the case of S.E.C. v. W.J. Howey Co. should be furthered by SEC Rule to permit main street business brokers to collect fee in securities transactions without any sort of state or federal licensing or registration requirements.
8. When the goal of a purchaser is not an investment which relies on the efforts of others, but is a desire to acquire the entire entity the securities laws should not be invoked requiring a business broker to have a securities license in order to legally collect a commission.
9. Business brokers are caught in securities regulation laws requiring them to secure securities licenses in order to legally collect a commission when those laws were

never intended to cover the sale of an entire business from an owner operator to an owner operator or to an accredited investor.

10. The main street business broker is the proverbial square peg in a round hole caught in a morass of regulations that were not meant to govern their activities as long as those activities are conducted in accordance with the Private Letter Rulings issued by the SEC to International Business Exchange Corporation on December 12, 1986 and some twenty years later to Country Business, Inc. on November 8, 2006 and the other parameters described in federal case of Vero Group v. ISS Service System, et al.