



March 31, 2009

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: FINRA's Proposed Investment Banking Classification
File Number SR-FINRA-2009-006
SEC Release 34-59484

Ladies and Gentlemen:

This comment letter is submitted on behalf of **Institute of Certified Business Counselors (ICBC)**, headquartered in Portland, Oregon. **ICBC** is the oldest business brokerage national organization in the country.

We are aware that FINRA proposes to establish a new limited representative registration category for investment banking professionals, called "Limited Representative—Investment Banking." While the **ICBC** supports FINRA's proposal because it recognizes the unique legal and professional responsibilities performed by intermediaries in mergers and acquisition transactions, it seems designed mainly for the large investment banking firms that have representatives in the U.K. and U.S. (the "big players") and who are providing services such as capital-raising and retail/institutional securities brokerage. As you are aware, these big players rarely offer their services to small and medium-sized businesses.

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Let's talk about small and medium-sized businesses. If you have read the **\$10 Trillion Opportunity: Designing Successful Exit Strategies for Middle Market Business Owners**, by Richard E. Jackim, you know that there is an incredible amount of wealth that is presently tied-up in many small to medium-sized businesses and professional practices. Thousands of the owners of these businesses and practices need to execute exit strategies so they might create liquidity for them and their estates. Although FINRA's proposal advances public investor protection at the institutional investment banking level, it fails to address the protection of sellers and buyers of small to medium-sized businesses. The activities of intermediaries and business brokers for sellers and buyers of small to medium-sized business in privately negotiated transactions are vastly different than Wall Street firms handling large and multi-national mergers, acquisitions, and syndications, most of which involve public-reporting companies. Considering the current state of the economy, which has produced an avalanche of buyers, i.e., former employees who have recently been laid-off and who are urgently searching for replacement income in the form of purchasing a business or a practice, as well as a new generation of entrepreneurs and business owners who also seek to buy those businesses and practices, facilitating the free flow of capital between small and medium-sized business owners in the U.S. is critically important to the recovery of our economy. Additionally, there must be a cost-effective way to encourage these transactions, instead of unnecessarily burdening the parties by having to pay for the regulatory costs associated with current federal and SRO securities regulation, which must be passed on to clients in the pricing of these professional services.

Accordingly, there is an urgent need for SEC action to appropriately scale securities regulation of M&A activity in the U.S. The SEC Commissioners should consider and advance for public comment the proposed rulemaking, previously presented to the SEC staff by the Alliance of Merger and Acquisition Advisors ("AM&AA"), with the support of the International Business Brokers Association ("IBBA"), the ICBC and other leading professional associations of M&A intermediaries and business brokers.

The AM&AA/IBBA proposals would create a federal registration exemption and simplified system of state regulation, coordinated through NASAA, for merger and acquisition intermediaries and business brokers serving small to medium-sized businesses. The proposal would also codify into an SEC rule

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the staff's no-action position articulated in its letter to *Country Business, Inc.* in 2006. Please help us so we may help our business clients.

We would welcome the opportunity to discuss with you the urgent needs of small and medium-sized business owners that are addressed in the rulemaking proposals presently under consideration by the staff of the Division of Trading and Markets. Facilitating the liquidity of capital amongst small and medium-sized business sellers and buyers is absolutely critical to the recovery of our nation's economy and the re-employment of thousands of workers.

Sincerely,

Brian A. Wendler
Institute of Certified Business Counselors President
CPA/Accredited in Business Valuation (ABV)
Accredited Senior Appraiser (ASA)
Certified Mergers & Acquisition Advisor (CM&AA)
Master Certified Business Counselor (MCBC)
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