Question 139.03

Question: Would a merger by Company A with a new holding company formed by Company A in another state qualify for the change in domicile exception in Rule 145(a)(2)?

Answer: ~~No. The exception from Rule 145 provided by Rule 145(a)(2) for a change in domicile is not available when, in addition to a change in domicile, a new organizational structure is created, such as a new holding company. [Jan. 26, 2009]~~**Answer:** Yes, if the sole purpose of the transaction is to effect a change of domicile solely within the United States. The exemption would not be available if, as part of or as a result of the transaction, the company's organizational structure, business operations, or regulatory regime change significantly, other than changes resulting directly from differences in applicable state law. Examples of situations where the exemption would not be available include, without limitation, a change from a business trust or limited partnership to a corporation, a change from a C corporation to an S corporation or a public benefit corporation, and the formation of a bank holding company. *See* Securities Act Rules C&DI 539.02 and Division of Corporation Finance's Interpretations of Rule 145 and Related Matters, Part II, Illustration D, Release No. 33-5463 (Feb. 28, 1974). [February 11, 2026]