CABIN

SECURITIES

February 15, 2023

Securities & Exchange Commission
Division of Trading and Markets

To Whom It May Concern,

We write to express our concerns with the recent amendment to Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) embodied in the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act (the "Act") contained in the Consolidated Appropriations Act, 2023.

We ask that the Commission exercise the authority provided it in the Act, that "the Commission may by rule modify the dollar figures if the Commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors." As a registered broker-dealer active in this space, we believe that lowering the Act's dollar figures is both necessary and appropriate to protect the public, including small business owners and investors, and propose that the $25 million EBITDA figure be reduced, and the $250 million gross revenue figure be reduced to $25 million.

While it may appear counterintuitive, the larger the transaction, the more critical it becomes to ensure professionals earning contingent, transaction-based compensation on these securities transactions are licensed and registered. This legislation was pitched all along as one that helps "main street and small business". Yet where does $250MM in revenue or $25MM in EBITDA correspond with the common understanding or established definition of "small business"?

Main street change of control transactions often look and feel like real estate deals and are marketed similar to real estate opportunities. The structure is often cash for assets and trigger real estate regulations. The buyers are often purchasing themselves a job. The larger the company, though, the more likely that the buyer (who will commonly be private equity/entire teams of professional buyers) will propose a complicated structure involving various securities components. The buyer may be a public company. The seller may receive the majority of consideration for the sale of his business in securities,

thus becoming a passive investor. The M&A Advisor is hired on these middle-market deals to advise the client on how to structure the deal. It is not in the public's best interest to allow the advisor, negotiating against private equity or other professional buyers, to hold zero securities qualifications, registrations or be subject to no regulation or oversight.

Aside from the complexity of securities structures in larger deals, the greater the consequences for unaddressed conflicts of interest. Inherently, the broker model – earning contingent compensation for a client engaging in securities transaction, is the most apparent conflict. The M&A Broker has all incentive to get a deal done, even if securities components are highly risky for the client. Without transparency, supervision and policies, sellers are at risk to close deals with shaky components. FINRA's guidance and oversight related to conflicts of interest serve to protect in scenarios like this and the numerous other conflicts that are present.

The larger the deal, the more confidential data is likely involved. Registered broker-dealers are subject to not only critical record keeping requirements but hold an obligation to ensure any data they possess is protected from the enormous cybersecurity threats that exist today. If the M&A advisor is not housing the exhaustive data for the client directly, they are often the party responsible for recommending and even holding the account with the cloud provider for the confidential data. Without regulatory oversight, the confidentiality of critical business information is at risk.

The larger the deal, the greater the likelihood that a public company may be an interested buyer. Under the currently regulatory framework, M&A advisors are subject to compliance and regulatory oversight related to confidential information, insider trading and restricted lists. The importance of supervision and transparency in this regard should not be minimized. They play a critical role for our markets.

There are currently over 700 FINRA member firms that engage in M&A Advisory. The commission surely does not wish to encourage these firms and their professionals to deregister? Further, it is assumedly not the intent to confuse the public and allow an individual to rely on the exemption for one transaction and tout his/her licenses for another transaction that does not fall within the exemption parameters? Our broker-dealer regulatory framework, which importantly is not one size fits all, provides:

- The ongoing education and testing of M&A advisors to insure key levels of proficiency;
- Clear rules of ethical conduct that are objective, transparent and enforceable;
- Public disclosure of disciplinary actions, liens and judgments;
- Critical supervisory oversight;
- The prohibition of excessive compensation – the most obvious conflict in this profession is the contingent compensation;
- Enforcement of compliance with state securities laws; and
- Implementation of cybersecurity and customer data protection measures.

We greatly appreciate your consideration on this important matter.

Sincerely,

Wm. Brian Candler
President