02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

032 OFFICE OF SECURITIES

Chapter 508: LICENSING EXEMPTION FOR CERTAIN MERGER AND ACQUISITION BROKERS

Summary: This chapter exempts certain brokers facilitating merger and acquisition transactions from state broker-dealer licensing requirements.

SECTION 1. Definitions

For the purposes of this chapter, the following definitions shall apply:

1. **Business Combination Related Shell Company. "**Business Combination Related Shell Company" means a shell company that is formed by an entity that is not a shell company:

   A. solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

   B. solely for the purpose of completing a business combination transaction (as defined under 17 C.F.R. § 230.165(f) (2025)) among one or more entities other than the company itself, none of which is a shell company.

2. **Control.** "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:

   A. 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

   B. 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.

3. **Eligible Privately Held Company.** "Eligible Privately Held Company" means a privately held company that meets both of the following conditions:

   A. The company does not have any class of securities registered, or required to be registered, with the SEC under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l (2024), or with respect to which the company files, or is required to file, periodic information, documents, and reports under 15 U.S.C. § 78o(d) (2024); and

   B. 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):

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

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

4. **Merger and Acquisition Broker.** "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:

A. upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert:

(1) 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

(2) 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, including without limitation, for example, by:
(a) electing executive officers;
(b) approving the annual budget;
(c) serving as an executive or other executive manager; or
(d) carrying out such other activities as the Administrator may, by rule, determine to be in the public interest; 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 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.

5. **SEC.** "SEC" means the United States Securities and Exchange Commission.

6. **Shell Company.** "Shell Company" means a company that at the time of a transaction with an eligible privately held company:

   A. has no or nominal operations; and

   B. has:

      (1) no or nominal assets;

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

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

SECTION 2. In General

Except as provided in sections 3 and 4, a merger and acquisition broker shall be exempt from licensing pursuant to the Maine Uniform Securities Act, 32 M.R.S. §§ 16401(2)(C) and 16402(2)(I).

SECTION 3. Excluded Activities

A merger and acquisition broker is not exempt from licensing under this chapter if such broker does any of the following:

1. 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.

2. 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 SEC under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l (2024), or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d) (2024).

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

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

5. Assists any party to obtain financing from an unaffiliated third party without:

   A. complying with all other applicable laws in connection with such assistance,

including, if applicable, Regulation T (12 C.F.R. § 220 *et seq*. (2025)); and

B. disclosing any compensation in writing to the party.

6. 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.

7. 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.

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

9. Binds a party to a transfer of ownership of an eligible privately held company.

SECTION 4. Disqualifications

A merger and acquisition broker is not exempt from licensing under this chapter if such broker (and if and as applicable, including any officer, director, member, manager, partner, or employee of such broker):

1. Has been barred from association with a broker or dealer by the SEC, any State, or any self-regulatory organization; or

2. Is suspended from association with a broker or dealer.

SECTION 5. Rule of Construction

Nothing in this chapter shall be construed to limit any other authority of the Administrator to exempt any person, or any class of persons, from any provision of the Maine Uniform Securities Act, 32 M.R.S. § 16101 *et. seq*., or from any provision of any rule or regulation thereunder.

SECTION 6. Inflation Adjustment

1. 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 section 1(3)(B) shall be adjusted by:

   A. dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers, 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 for the calendar year ending December 31, 2020; and

   B. multiplying such dollar amount by the quotient obtained under paragraph (A).

2. ROUNDING – Each dollar amount determined under subsection (1) shall be rounded to

the nearest multiple of $100,000.

SECTION 7. Location of incorporated materials

Copies of the materials incorporated by reference into this rule are available at no charge from the State of Maine Office of Securities.

STATUTORY AUTHORITY: 32 M.R.S. §§ 16401(2)(C), 16402(2)(I) and 16605(1).

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