SEC Clarifies Registration Requirements For M & A Brokers

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The staff of the Securities and Exchange Commission (SEC) recently issued a no-action letter that clarifies the obligation of brokers who facilitate merger and acquisition transactions of private companies. As a result of a 1985 holding by the United States Supreme Court that the sale of the outstanding capital stock of a privately owned corporation constituted a securities transaction, the SEC had been broadly interpreting the definition of "broker," including parties who act as intermediaries in the sale of privately owned companies as brokers required to register under the Securities Exchange Act of 1934.

The SEC's January 31, 2014 no-action letter provides the basis for such intermediaries not to register under the Act. The SEC established a list of criteria that must be satisfied in order to fit within the safe harbor created by the no-action letter. These include the inability of the M & A broker to bind any party to the transaction, a prohibition on providing financing for the transaction, the lack of a public offering or shell company as a party to the transaction, and a requirement that the M & A broker may not be barred from association with any broker dealer by the SEC, any State securities agency or any self-regulatory organization, nor be suspended from association with a broker dealer.

For further information concerning this issue, please contact the author of this Alert, **W. Raymond Felton**, or any member of our Corporate Department.

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