Registration Exemption for Merger and Acquisition Brokers – SEC Withdraws No-Action Letter Option

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In the client alert dated January 27, 2023, we described a recently enacted federal exemption (the "Exemption") from SEC registration for Merger and Acquisition Brokers which meet the qualifications of amended Section 15(b) of the Securities Exchange Act of 1934. The Exemption became effective on March 29, 2023.

Referenced in our alert was an SEC No-Action letter dated January 31, 2014 (the "No Action Letter") which provided guidance for a broker-dealer exemption very similar to the Exemption.

When enacted, the Exemption did not have the effect of superseding the No-Action Letter, thereby enabling broker-dealers to secure an exemption from registration under either the new Exemption or the No-Action Letter. The significant difference is that the No-Action Letter set no limitation on the size of the privately held target company as does the Exemption (EBITDA less than $25 million, and gross revenues less than $250 million).

Effective March 29, 2023, the SEC has withdrawn the No-Action Letter, thereby leaving the Exemption as the only avenue for exemption from registration.

A reminder that broker-dealers seeking exemption should also be mindful that compliance with state law registration requirements may be required.

We Can Help

For questions, please contact Scott McGinness or another member of our Securities Practice Group.