

ATTACHMENT A

New language is underlined; deletions are in brackets.

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CAPITAL ACQUISITION BROKER RULES

010. GENERAL STANDARDS

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016. Definitions

When used in the Capital Acquisition Broker Rules, unless the context otherwise requires:

(a) through (b) No Change.

(c) “Capital Acquisition Broker”

(1) A “capital acquisition broker” is any broker that solely engages in any one or more of the following activities:

(A) through (E) No Change.

(F) qualifying, identifying, soliciting, or acting as a placement agent or finder;

(i) on behalf of an issuer or institutional investor ~~buyer~~ in connection with a sale of newly-issued, unregistered securities to institutional investors[,];
or

(ii) [on behalf of an issuer or a control person] in connection with a change of control of a privately-held company, regardless of whether the capital acquisition broker acts on behalf of a seller or buyer.

a. For purposes of this subparagraph, [a] “control [person]” means [is a person who has] the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Control will be presumed to

exist if, [before] upon completion of the transaction, the [person] buyer or group of buyers has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital. For purposes of this subparagraph, a “privately-held company” is a company that does not have any class of securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12 of the Exchange Act or with respect to which the company files, or is required to file, periodic information, documents, or reports under Section 15(d) of the Exchange Act.]; and]

b. A capital acquisition broker may represent both the buyer and the seller in the same transaction under this paragraph (c)(1)(F)(ii) after providing clear written disclosure as to the parties the capital acquisition broker represents and obtaining written consent from both parties to the joint representation;

(G) effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of Section 15(b)(13) of the Exchange Act or any provision of an SEC rule, release, interpretation or “no-action” letter that permits a person to engage in [such]the

same or materially similar activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act[.]; and

(H) qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor that seeks to sell or buy unregistered securities,
provided that:

(i) the seller and buyer of such securities are both institutional investors; and

(ii) the sale of such securities qualifies for an exemption from registration under the Securities Act.

(2) No Change.

(d) through (h) No Change.

(i) “Institutional Investor”

The term “institutional investor” means any:

(1) through (5) No Change.

(6) person meeting the definition of “qualified purchaser” as that term is defined in Section 2(a)(51) of the Investment Company Act[of 1940]; [and]

(7) [any] person acting solely on behalf of any such institutional investor[.]; and

(8) eligible employee.

(j) through (l) No Change.

(m) “Eligible Employee”

The term “eligible employee” means, with respect to an issuer for which the capital acquisition broker has provided services to the issuer or a person that controls the issuer permitted under subparagraphs (F) or (G) of Rule 016(c)(1):

(1) any “Knowledgeable Employee” as defined in Investment Company Act Rule 3c-5 (“Rule 3c-5”) with respect to services provided to an issuer that is a Covered Company as defined in Rule 3c-5 or services provided to an Affiliated Management Person of such Covered Company as defined in Rule 3c-5; and

(2) the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in Rule 3c-5.

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300. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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328. Private Securities Transactions of an Associated Person

[No person associated with a capital acquisition broker shall participate in any manner in a private securities transaction as defined in FINRA Rule 3280(e).] All capital acquisition brokers are subject to FINRA Rule 3280.

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500. SECURITIES OFFERINGS

511. Securities as Compensation

A capital acquisition broker may receive compensation in the form of equity securities of a privately held issuer on behalf of which the capital acquisition broker provided services permitted under Rule 016(c)(1), provided that the receipt, exercise or subsequent sale of such securities will not cause the capital acquisition broker to engage in any activity prohibited under Rule 016(c)(2).

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