

# AM&AA Licensure Initiative

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M&A Source Webinar  
February 19, 2009

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    - *The general public.*
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## □ Partial List of Contributors

- Alliance of Merger & Acquisition Advisors (AM&AA)
- International Network of M&A Partners (IMAP)
- Alliance for Corporate Wealth (ACW)
- Midwest Business Brokers & Intermediaries (MBBI)
- International Business Brokers Association (IBBA)
- M&A Source
- Business Brokers of Florida (BBF)
- Colorado Association of Business Intermediaries (CABI)
- Mid Atlantic Business Intermediaries Association (MABIA)
- Texas Association of Business Brokers (TABB)
- California Association of Business Brokers (CABB)
- Institute of Certified Business Counselors (ICBC)
- Georgia Association of Business Brokers (GABB)
- Numerous Individuals and Firms

(see AM&AA website [www.amaaonline.com/advocacy](http://www.amaaonline.com/advocacy) for complete list)

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- Fully supports three separate, but related proposals:
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    - Private Place Broker (PPB) by ABA
    - M&A Broker (MAB) by AM&AA
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- Fully supports three separate, but related proposals:
    - Private Place Broker (PPB) by ABA
    - M&A Broker (MAB) by AM&AA
    - Small Business Sale Transaction Exemption (CBI No Action) by IBBA
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# Private Placement Broker (PPB)

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- First proposed by ABA in 2005
  - Allows registered but unlicensed finders and brokers to:
    - Raise capital from qualified individuals and institutions;
    - Fully participate in advising, negotiating and structuring private securities offerings;
    - If approved by FINRA, share fees with other registered broker-dealers;
    - Operate in a simplified regulated environment with a lower setup cost and at a lower annual operating cost.
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# Next Steps on PPB

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- ❑ Continue communicating our support to federal & state regulators
  - ❑ Monitor developments to ensure consistency with original proposal
  - ❑ Coordinate with ABA Task Force as required on any revisions to ensure our interest is considered/protected
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# M&A Broker (MAB)

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- First proposed by AM&AA in 2006
  - Allows registered but unlicensed finders and brokers to:
    - Assist in the sale/purchase of a business, regardless of size or ultimate deal structure, whether asset or stock sale;
    - List and advertise the business itself for sale, in whole or in part;
    - Advise and assist in valuing the business (but not its securities in a market or an offering);
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# M&A Broker (MAB), continued

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- Negotiate price and terms of sale;
  - Advertise itself as a "State Registered M&A Broker or Advisor;"
  - Receive compensation from commercial lenders and third-party service providers for fully disclosed referrals;
  - If approved by FINRA, receive referral fees from registered broker-dealers.
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# M&A Broker (MAB), continued

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- Proposed simplified regulations would require a registered M&A Broker to:
    - Disclose background information about the M&A firm, its professionals, and their credentials;
    - Describe, in writing, the terms and conditions of the engagement;
    - Disclose conflicts of interest;
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# M&A Broker (MAB), continued

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- Annually file a simplified registration in its home state(s);
  - File a copy of the home-state registration, when conducting business in other states;
  - Maintain simplified books and records related to these activities; (no audited financial statements).
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# M&A Broker (MAB), continued

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- Proposed regulations would prohibit:
    - Conduct that is fraudulent, unlawful, or unethical under today's professional standards;
    - Any involvement with raising capital to invest in or buy a business;
    - Any holding, handling, or possessing the parties' funds or securities;
    - Discretionary authority to close a transaction on behalf of client.
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# Small Business Sale Transaction Exemption (CBI No Action Letter)

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- ❑ First initiated by IBBA in 2006
  - ❑ Elevate protections afforded by CBI No Action letter to an exemptive rule and expand coverage to buy-side and non-representation engagements
  - ❑ Allow unlicensed finder or broker to receive transaction-based compensation from the sale of 100% of a company's stock...
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# Small Business Sale Transaction Exemption, continued

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- ...provided certain conditions are met:
    - Must be 100% of company's stock
    - Must be "small business" as defined by SBA
    - Only business assets may be advertised or otherwise offered for sale
    - May be involved in valuing the business assets
    - Must not advise on deal structure, i.e., asset vs stock sale
    - Compensation must be in cash, and be independent of deal structure
    - Must not assist with financing other than uncompensated referrals to third party lenders
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# Status & Next Steps

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- ❑ PPB & MAB proposals have been among the top recommendations of the SEC's annual Forum on Small Business Capital Formation for 2006 & 2007.
  - ❑ PPB has been a top recommendation even from prior SEC Forums.
  - ❑ Confidently anticipate that PPB, MAB and Small Business Sale Transaction Exemption will once again be top recommendations from 2008 Forum.
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## Status & Next Steps, continued

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- Strong support from the senior staff within the SEC, and from the leadership with NASAA
  - SEC expected to publish PPB proposal for public comment later this year, followed by MAB & Small Business Sale Transaction Exemption
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# Status & Next Steps, continued

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- ❑ Following a period of public comment, SEC will issue as formal rules, and NASAA will begin work to create model rules for adoption by all states and jurisdictions
  - ❑ The process of regulatory change is inherently slow, and these proposals will require action both federally and, after NASAA makes its recommendations, on a state by state basis.
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## For the Future: Strongly Optimistic

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- *This issue is clearly receiving significant attention at both the federal and state regulatory levels, as well as in the legal and business press.*
  - *There is a growing understanding of the importance and contribution of M&A advisor/intermediary activities to small businesses owners and the US economy overall.*
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# For the Future: Strongly Optimistic, continued

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- *In turn, there is a growing understanding of the need to bring order and clarity to this area of economic activity, while keeping these services affordable for small business owners.*
  - *Now, more than ever, there is a regulatory environment and willingness to consider new rulemaking in this area in a coordinated effort between state and federal regulators.*
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# What Should You Do Now?

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- ❑ For now, M&A Advisors and Business Brokers are strongly encouraged to review the scope of their operations with a trusted advisor who fully understands the various state and federal laws governing their activities to make certain they stay up-to-date and in compliance.
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# Other Resources

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- ❑ For more detailed information and for the latest updates visit these websites:
  - ❑ [www.masource.org](http://www.masource.org)
  - ❑ [www.amaaonline.com/advocacy](http://www.amaaonline.com/advocacy)
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# Contact Information

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- If you have questions about how to contribute financially, or with your time and resources, contact:
    - Mike Ertel, Co-Chair, 888.864.6610, [mikeertel@legacyadvisorsgroup.com](mailto:mikeertel@legacyadvisorsgroup.com)
    - Jim Cornell, Co-Chair, (716) 675-6001 x 223, [cornelljim@praxiis.com](mailto:cornelljim@praxiis.com)
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