BEFORE THE
MARYLAND SECURITIES COMMISSIONER

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IN THE MATTER OF:

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MERGER AND ACQUISITION BROKER-DEALER

December 7, 2017

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ORDER

WHEREAS, on January 31, 2014, the United States Securities and Exchange Commission ("SEC") issued a no action letter ("M&A Broker Letter"), a copy of which is attached as Exhibit A, to allow persons serving as intermediaries ("M&A Brokers") in the sale of private companies to purchasers that intend to operate those companies, to effect securities transactions in connection with the transfer of ownership of privately-held companies without requiring those M&A Brokers to register as broker-dealers; and

WHEREAS, the M&A Broker Letter provides that if M&A Brokers perform certain covered activities ("covered activities") under certain conditions set forth in that letter, the M&A Broker may rely on the M&A Broker Letter and engage solely in covered activities without registration as a broker-dealer; and WHEREAS, the Maryland Securities Commissioner (the "Commissioner") has determined that it is appropriate for Maryland to adopt the M&A Broker Letter to allow an M&A Broker that complies with the requirements of that letter to engage solely in covered activities without registration as a broker-dealer; and

WHEREAS, section 11-804 of the Maryland Securities Act, Corporations & Associations

Article, Title 11, Annotated Code of Maryland (2014 Repl. Vol. & 2017 Supp.) (the "Maryland Securities Act") provides that the statute "shall be construed to effectuate its general purpose to make uniform the law of those states which enacted it and to coordinate the interpretation and administration of this title with the related federal regulation"; and WHEREAS, the Commissioner has determined that adopting the position set forth in the M&A Broker Letter is consistent with the public interest and within the purposes fairly intended by the policy and provisions of the Maryland Securities Act.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to the authority granted by sections 11-203 and 11-401 of the Maryland Securities Act, that:

1. A person acting on behalf of a company to effect a merger and acquisition will not be not required to be registered as a broker-dealer, provided the person complies with the requirements set forth in this Order and in the M&A Broker Letter; and

2. The M&A Broker Letter in its entirety is incorporated by reference into this Order.

DATE OF THIS ORDER:

December 7, 2017

SO ORDERED:

Melanie Senter Lubin
Securities Commissioner

EXHIBIT A

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

January 31, 2014
[Revised: February 4, 2014]

Faith Colish, Esq., Carter Ledyard & Milburn LLP
Martin A. Hewitt, Esq., Attorney at Law
Eden L. Rohrer, Esq., Crowell & Moring, LLP
Linda Lerner, Esq., Crowell & Moring, LLP
Ethan L. Silver, Esq., Carter Ledyard & Milburn LLP
Stacy E. Nathanson, Esq., Crowell & Moring, LLP

RE: M&A Brokers

Dear Ms. Colish, Mr. Hewitt, Ms. Rohrer, Ms. Lerner, Mr. Silver and Ms. Nathanson:

In your letter dated January 31, 2014, you requested assurances that the Division of Trading and Markets would not recommend enforcement action to the Commission under Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") if an "M&A Broker" (as that term is defined below) were to engage in the activities described in your letter in connection with the purchase or sale of a privately-held company without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

Based on the facts and representations in your request (in particular those described below), and without necessarily agreeing with your analysis, the Division would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if an M&A Broker were to effect securities transactions in connection with the transfer of ownership of a privately-held company under the terms and conditions described in your letter without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act. Different facts and circumstances may cause us to reach a different conclusion. The relief in this letter is limited solely to the transactions described in your letter.

An "M&A Broker" for purposes of this letter is a person engaged in the business of effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company (as defined below) 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. A buyer could actively operate the company through the power to elect executive officers and approve the annual budget or by service as an executive or other executive manager, among other things.

A "privately-held company" for purposes of this letter is a company that does not have any class of securities registered, or required to be registered, with the 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. Any privately-held company that is the subject of this letter would be an operating company that is a going concern and not a "shell" company.[1]

You requested relief on behalf of M&A Brokers that facilitate mergers, acquisitions, business sales, and business combinations (together, "M&A Transactions") between sellers and buyers of privately-held companies, without regard to the size of the privately-held companies. Your letter contemplates that the M&A Broker may advertise a privately-held company for sale with information such as the description of the business, general location, and price range.

In issuing this letter, we note in particular your representations that:

1. The M&A Broker will not have the ability to bind a party to an M&A Transaction.

2. An M&A Broker will not directly, or indirectly through any of its affiliates, provide financing for an M&A Transaction. An M&A Broker that assists purchasers to obtain financing from unaffiliated third parties must comply with all applicable legal requirements, including, as applicable, Regulation T (12 CFR 220 *et seq.*), and must disclose any compensation in writing to the client.

3. Under no circumstances will an M&A Broker have custody, control, or possession of or otherwise handle funds or securities issued or exchanged in connection with an M&A Transaction or other securities transaction for the account of others.

4. No M&A Transaction will involve a public offering. Any offering or sale of securities will be conducted in compliance with an applicable exemption from registration under the Securities Act of 1933 ("Securities Act"). No party to any M&A Transaction will be a shell company, other than a business combination related shell company.[2]

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[1] A "shell" company is a company that: (1) has no or nominal operations; and (2) has: (i) no or nominal assets; (ii) assets consisting solely of cash and cash equivalents; or (iii) assets consisting of any amount of cash and cash equivalents and nominal other assets. In this context, a "going concern" need not be profitable, and could even be emerging from bankruptcy, so long as it has actually been conducting business, including soliciting or effecting business transactions or engaging in research and development activities.

[2] The term "business combination related shell company" means a shell company (as defined in Securities Act Rule 405) that is: (1) formed by an entity that is not a shell company solely for the purpose

5. To the extent an M&A Broker represents both buyers and sellers, it will provide clear written disclosure as to the parties it represents and obtain written consent from both parties to the joint representation.

6. An M&A Broker will facilitate an M&A Transaction with a group of buyers only if the group is formed without the assistance of the M&A Broker.

7. The buyer, or group of buyers, in any M&A Transaction will, upon completion of the M&A Transaction, control and actively operate the company or the business conducted with the assets of the business. A buyer, or group of buyers collectively, would have the necessary control if it has the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The necessary control will be presumed to exist if, upon completion of the transaction, the buyer or group of buyers has the right to vote 25% or more of a class of voting securities; has 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. In addition, the buyer, or group of buyers, must actively operate the company or the business conducted with the assets of the company.

8. No M&A Transaction will result in the transfer of interests to a passive buyer or group of passive buyers.

9. Any securities received by the buyer or M&A Broker in an M&A Transaction will be restricted securities within the meaning of Rule 144(a)(3) under the Securities Act of 1933 because the securities would have been issued in a transaction not involving a public offering.

10. The M&A Broker (and, if the M&A Broker is an entity, each officer, director or employee of the M&A Broker): (i) has not been barred from association with a broker-dealer by the Commission, any state or any self-regulatory organization; and (ii) is not suspended from association with a broker-dealer. This staff position is limited to the registration requirements of Section 15(a) of the Exchange Act. Other provisions of the federal securities laws, including but not limited to the anti-fraud provisions, continue to apply. The staff expresses no view with respect to any other questions raised by an M&A Transaction, including, but not limited to, the applicability of other federal or state laws to the operation of M&A Brokers.

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of changing the corporate domicile of that entity solely within the United States; or (2) formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction (as defined in Securities Act Rule 165(f)) among one or more entities other than the shell company, none of which is a shell company.

If you have any questions regarding this letter, please call Joseph Furey, Joanne Rutkowski, Darren Vieira, or me at (202) 551-5550.

Sincerely,

David W. Blass
Chief Counsel and Associate Director