



JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

State of Utah  
Department of Commerce  
Division of Securities

FRANCINE A. GIANI  
*Executive Director*

THAD LEVAR  
*Deputy Director*

KEITH WOODWELL  
*Director of Securities*

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RE: Unlicensed Broker-Dealer Activity – “Business Brokering”

Dear Business Broker:

The Utah Division of Securities (“Division”) has received an increase in public inquiries regarding entities acting as “Business Brokers.” Some activities being conducted as well as advertised by business brokers would make them broker-dealers under the Utah Uniform Securities Act (“Act”).

§61-1-13(1)(c) states:

“Broker-dealer” means any person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account...

A majority of the activities recently brought to the attention of Division staff would require licensure as a broker-dealer. From a review of the internet web sites of businesses claiming to offer business brokering, many claim to offer “investment banking,” “merger and acquisitions,” as well as “fund-raising and growth.” These activities would be difficult, if not impossible to conduct without being deemed a broker-dealer under the securities laws. The Division is also concerned that in addition to acting as unlicensed broker-dealers, some “Business Brokers” may be offering legal advice and not recognize that the securities of the companies they assist may need to be registered or qualify for a legal exemption from registration.

In an instance where the “Business Broker” may not be deemed to be a broker-dealer, it will likely be an agent under the Act. This would be the case if only one transaction occurred during any 12 month period.

§61-1-13(1)(b)(i) states:

“Agent” means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

Please be aware that effecting or attempting to effect a transaction in a security may require licensing with the Division. Broker-dealers and agents are required to license with the state, and often need to register with the Securities and Exchange Commission (“SEC”), and the Financial Industry Regulatory Authority (“FINRA”).

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§61-1-3 states:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

(2) (a) It is unlawful for any broker-dealer or issuer to employ or engage an agent unless the agent is licensed. The license of an agent is not effective during any period when he is not associated with a particular broker-dealer licensed under this chapter or a particular issuer.

In addition to being deemed an unlawful act, this unlicensed activity can expose the issuer of the securities and the unlicensed agent and/or broker-dealer to civil liabilities under the Act.

§61-1-22 (1) states:

(1) (a) A person who offers or sells a security in violation of Subsection 61-1-3(1), Section 61-1-7, Subsection 61-1-17(2), any rule or order under Section 61-1-15, which requires the affirmative approval of sales literature before it is used, any condition imposed under Subsection 61-1-10(4) or 61-1-11(7), or offers, sells, or purchases a security in violation of Subsection 61-1-1(2) is liable to the person selling the security to or buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 12% per year from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security or for damages if he no longer owns the security.

This information is being provided to protect not only the company which may be an issuer of a security that unwittingly employs an unlicensed broker-dealer or agent, but also those entities that may be acting, marketing or holding themselves out as a broker-dealer or agent in violation of the Act.

For further information please free to contact the Division or seek the advice of a member of the Utah State Bar's Securities Section.

Sincerely,



Keith Woodwell - Director  
Utah Division of Securities