PA 25-85—sHB 6875
Banking Committee

AN ACT CONCERNING THE CONNECTICUT UNIFORM SECURITIES ACT

SUMMARY: This act makes three changes to the state's securities laws.

First, the act expands the Department of Banking (DOB) commissioner's enforcement authority over registered securities broker-dealers, broker-dealer agents, investment advisers, and investment adviser agents by allowing him to censure them or impose a bar for the same reasons existing law allows him to deny, suspend, or revoke a registration or restrict or condition securities or investment advisory activities (e.g., certain statutory noncompliance or criminal convictions, subject to certain federal orders, insolvency, or supervision failure). The commissioner's expanded authority also covers the registrants' partners, officers, and directors, and any person who directly or indirectly controls them. By law, these enforcement actions are subject to prior notice, an opportunity for a hearing, and written findings of fact and conclusions of law.

Second, the act requires securities issuers that propose to offer or sell in a Tier 2 offering, within 21 days before the initial sale of securities in Connecticut, to file a notice of filing and certain related documents with DOB and pay a $250 filing fee.

Lastly, the act creates a state broker-dealer registration exemption for merger and acquisition (M & A) broker-dealers, which parallels a federal exemption under the Securities Exchange Act.

EFFECTIVE DATE: Upon passage

TIER 2 NOTICE FILING FORM AND FEE

The act requires securities issuers that propose to offer or sell in a Tier 2 offering, within 21 days before the initial sale of securities in Connecticut, to file the following with the DOB and pay a $250 filing fee:

1. completed Regulation A – Tier 2 notice filing form and, if the DOB commissioner requests them, copies of all documents filed with the Securities and Exchange Commission (SEC) related to the form and
2. consent to service of process if the consent is not on the notice filing form.

Under the act, the initial notice filing is effective for 12 months after its filing with the DOB. For each additional 12-month period that continues the same offering, the issuer may renew its notice by filing a renewal notice filing form and paying a $250 renewal fee by the notice filing expiration date.

Federal securities laws require security offerings and sales to be registered with the SEC or meet an exception. Regulation A is an exception that applies to public offerings, which includes two tiers. A "Tier 2" offering is one of up to $75 million

in a 12-month period.

M & A BROKER-DEALER EXEMPTION

The act codifies a federal registration exemption for M & A broker-dealers (see 15 U.S.C. § 78o). These broker-dealers work for sellers or buyers in securities transactions solely as part of an ownership transfer of an "eligible privately held company" (generally a company that meets specified registration, filing, and size requirements) under certain conditions. For example, the broker-dealer must reasonably believe that the person acquiring the assets will control the company or its business (such as having the right to vote or direct the sale of 25% of its voting shares) and be active in its management. Previously, they had to be registered in Connecticut as regular broker-dealers.

Under the act, the exemption does not apply to an M & A broker-dealer that does the following:

1. receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;
2. engages, on an issuer's behalf, in a public offering of any class of securities (a) that is, or should be, registered with the SEC or (b) to which the issuer files or must file, certain periodic information, documents, and reports;
3. engages on behalf of any party in a transaction involving a "shell company" (i.e. one with no or nominal operations and no or nominal assets, only cash or cash equivalent assets, or a combination of cash or cash equivalents and nominal other assets) but not a "business combination related shell company" (i.e. a shell company only used to change a non-shell company's domicile in the United States or to complete certain business combinations);
4. provides financing related to an eligible privately held company's ownership transfer;
5. helps any party get financing from an unaffiliated third party without complying with associated laws and disclosing compensation in writing to the party;
6. represents both the buyer and seller in the same transaction without giving clear, written disclosure as to the parties the broker-dealer represents and having written consent from both parties;
7. facilitates a transaction with a group of buyers that the broker-dealer helped form to acquire the eligible privately held company;
8. engages in a transaction that involves the transfer of ownership of an eligible privately held company to a passive buyer or group of them;
9. binds a party to an eligible privately held company's ownership transfer; or
10. was subject to certain court or regulatory actions such as a securities- or finance-related criminal conviction or court injunction, a DOB or SEC cease and desist order, a registration revocation, or certain other sanctions (which also applies to the actions of the broker-dealer's officers, directors, members, managers, partners, control persons, or employees).