**Section 130.830 Registration Exemption for Merger and Acquisition Brokers Pursuant to Section 4(I) of the Act**

a) "Control", as used in this Section, means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who:

1) is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility (or has similar status or functions);

2) has the right to vote 20% or more of a class of voting securities or the power to sell or direct the sale of 20% or more of a class of voting securities; or

3) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20% or more of the capital.

b) "Eligible Privately Held Company", as used in this Section, means a company meeting both of the following conditions:

1) The company does not have any class of securities registered, or required to be registered, with the U.S. Securities and Exchange Commission (SEC) under section 12 of the Securities Exchange Act of 1934 (15 USC 78*l*) or with respect to which the company files, or is required to file, periodic information, documents and reports under section 15(d) of that Act (15 USC 78o(d)).

2) In the fiscal year ending immediately before the fiscal year in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

A) The earnings of the company before interest, taxes, depreciation and amortization are less than $25,000,000.

B) The gross revenues of the company are less than $250,000,000.

3) Inflation Adjustment

A) In regards to inflation, on the date that is five years after the date of the enactment of the rule, and every five years thereafter, each dollar amount in subsection (b)(2) shall be adjusted by:

i) dividing the annual value of the Employment Cost Index for wages and salaries, private industry workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of the index (or successor) for the calendar year ending December 31, 2015; and

ii) multiplying such dollar amount by the quotient obtained under subsection (b)(3)(A)(i).

B) In regards to rounding, each dollar amount determined under this subsection (b)(3) shall be rounded to the nearest multiple of $100,000.

c) "Merger and Acquisition Broker", as used in this Section, means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase or redemption of, or a business combination involving, securities or assets of the eligible privately held company if the broker reasonably believes:

1) that, upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and

2) if any person is offered securities in exchange for securities or assets of the eligible privately held company, that person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to:

A) the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed or compiled, any related statement by the independent accountant;

B) a balance sheet dated not more than 120 days before the date of the exchange offer; and

C) information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.

d) "Public Shell Company", as used in this Section, is a company that, at the time of a transaction with an eligible privately held company:

1) has any class of securities registered, or required to be registered, with the SEC under section 12 of the Securities Exchange Act of 1934 or with respect to which the company files, or is required to file, periodic information, documents and reports under section 15(b) of that Act;

2) has no or nominal operations;

3) has:

A) no or nominal assets;

B) assets consisting solely of cash and cash equivalents; or

C) assets consisting of any amount of cash and cash equivalents and nominal other assets.

e) Except as provided in subsections (f) and (g) of this Section, a merger and acquisition broker shall be exempt from registration pursuant to Section 4(I) of the Act.

f) A merger and acquisition broker is not exempt from registration under this Section if the broker does any of the following:

1) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits or has custody of the funds or securities to be exchanged by the parties to the transaction.

2) Engages, on behalf of an issuer, in a public offering of any class of securities that is registered, or is required to be registered, with the SEC under section 12 of the Securities Exchange Act of 1934 or with respect to which the issuer files, or is required to file, periodic information, documents and reports under section 15(d) of that Act.

3) Engages, on behalf of any party, in a transaction involving a public shell company.

g) A merger and acquisition broker is not exempt from registration under this Section if that broker is subject to any of the following:

1) Suspension or revocation of registration under section 15(b)(4) of the Securities Exchange Act of 1934 (15 USC 78o(b)(4));

2) A statutory disqualification described in section 3(a)(39) of the Securities Exchange Act of 1934 (15 USC 78c(a)(39));

3) A disqualification under the rules adopted by the SEC under section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 USC 77d note); or

4) A final order described in section 15(b)(4)(H) of the Securities Exchange Act of 1934 (15 USC 78o(b)(4)(H)).

h) Nothing in this Section shall be construed to limit any other authority of the Secretary of State to exempt any person, or any class of persons, from any provisions of the Act or this Section.

i) Nothing in this Section shall be construed to limit any other authority of the Secretary of State to enforce other provisions of the Act or this Section.

(Source: Added at 40 Ill. Reg. 13248, effective September 1, 2016)