

Cautionary Notice to Sellers Regarding Securities Transactions

Certified Acquisition Associates LLC operates in association with Aria Capital Advisors, LLC (Aria). Dan Maloney is a registered representative and Managing Director of Aria. He is FINRA licensed as a general Securities Principal (Series 24) in Corporate Securities (Series 62), Investment Banking (Series 79) and State Securities Laws (Series 63) in addition to being a Florida Licensed Real Estate Broker.

Aria is a member of FINRA (the Financial Industry Regulatory Authority) and is a Registered Broker-Dealer. Aria, an investment banking firm, focuses on Merger and Acquisition engagements generally structured as securities transactions. It also focuses on capital raising transactions. (See www.AriaCapital.com).

If the sale of a business is structured as a securities transaction (as differentiated from an asset sale transaction), the deal may be subject to rescission for 3-5 years after the fact (depending on state laws pertaining to the statute of limitations) if it is not transacted through a broker-dealer.

Why? Because in any business sale which involves the purchase, sale, issuance, or exchange of stock or other types of securities, US & state securities laws apply in addition to other state laws, like real estate licensing laws. The SEC Broker-Dealer Guide says that registration is required by finders, business brokers and others engaged in finding investors for issuers (entities issuing securities) and in finding buyers and sellers of businesses in acquisitions where securities are involved.

What is a “security”? The term “security” is broadly defined. Under the Securities Exchange Act of 1934, the term “security” means any note, stock, treasury stock, security future, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral, royalty or lease, any collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a “security”...

The sale of a business is always a securities transaction if:

- It is a “stock” sale vs an “asset” sale;
- It involves an exchange or issuance of stock in a merger;
- It involves the issuance or exchange of stock for assets;
- It involves the sale of stock to an ESOP;
- It involves a fractional interest in the business.

The sale of a business is likely to be a securities transaction if:

- It involves an earn-out;

- It involves a “Seller’s Note,”;
- There are “Equity Kickers”; or terms that affect the risk/rewards to the note holder.

Stock transactions, seller notes, earn outs, and contingent payments can all fall within the definitional purview of security transactions.

Please note: To function as a business broker, an agent must be licensed in real estate. Most business brokers are not licensed in securities or affiliated with a Broker-Dealer.

Sellers are advised to inquire into whether their intermediary maintains an active securities license. Don’t risk having your transaction unwind. With its association with Aria, CAA can give you the peace of mind that the sale of your business, whether it be structured as an asset sale or a securities transaction, will be handled by properly licensed professionals.