

**191—50.10(502) Broker-dealer registrations, renewals, amendments, succession, and withdrawals.**

**50.10(1)** An applicant for an initial registration to conduct business as a broker-dealer must:

*a.* File a current Form BD. If the applicant is a member of FINRA, Form BD shall be filed with CRD. If the applicant is not a member of FINRA, Form BD shall be signed and notarized and filed with the administrator; and

*b.* Pay a \$200 filing fee. If the applicant is a member of FINRA, the fee shall be remitted to the CRD. If the applicant is not a member of FINRA, the fee shall be remitted to the administrator.

**50.10(2)** No application for initial registration will be deemed complete for purposes of Iowa Code section 502.406(3) until the applicant has been approved as a member of FINRA.

**50.10(3)** An applicant that is a member of FINRA and that seeks renewal of a broker-dealer registration shall comply with the renewal time frames established by FINRA for renewal on the CRD system and shall:

*a.* File with CRD an updated Form BD;

*b.* Pay to the CRD a \$200 renewal filing fee.

**50.10(4)** An applicant that is not a member of FINRA and that seeks renewal of a broker-dealer registration shall by November 30 of each year:

*a.* File with the administrator an updated Form BD, manually signed and notarized;

*b.* File with the administrator the renewal applicant's most recent audited financial statements if they were not previously submitted to the administrator pursuant to subrule 50.10(1);

*c.* Pay a \$200 renewal filing fee, which shall be remitted to the administrator.

**50.10(5)** Failure to comply with the requirements of subrule 50.10(3) or 50.10(4) shall be deemed a request for withdrawal of the broker-dealer registration, and the registration will be terminated as of December 31 of the renewal year.

**50.10(6)** A registered broker-dealer that is a FINRA member shall submit a withdrawal request by filing an accurate and complete Form BDW with CRD. A registered broker-dealer that is not a FINRA member shall submit a withdrawal request by filing an accurate and complete Form BDW with the administrator.

**50.10(7)** For purposes of Iowa Code section 502.406(2), a correcting amendment to the information or a record contained in either an initial or renewal application shall be considered to be filed "promptly" with the administrator if filed within 30 days of the event necessitating the correcting amendment.

**50.10(8)** Succession and change in registration.

*a.* In the case of an organizational change, including a change in the state of incorporation or form of organization, not involving a material change in financial condition or management, a broker-dealer shall file all applicable amendments to Form BD.

*b.* In the case of an organizational change, including a change in the state of incorporation or form of organization, involving a material change in financial condition or management, a broker-dealer shall file a new application for registration pursuant to subrule 50.10(1). The filing must include the fee pursuant to paragraph 50.10(1)"c" and registration fees for all Iowa-registered agents.

*c.* In the case of a change in name, a broker-dealer shall file all applicable amendments to Form BD.

**50.10(9)** Upon the administrator's oral or written request, a broker-dealer shall provide to the administrator the broker-dealer's most recent financial reports, audited or unaudited, within two business days of the request. A broker-dealer may utilize express mail delivery or transmission via electronic means to comply with a request pursuant to this subrule. Financial reports not received by the filing deadline are subject to a late fee of \$50 per day beyond the filing deadline, not to exceed an aggregate penalty of \$500. Imposition of the late fee is not a reportable event. In the event of the broker-dealer's continued noncompliance, the administrator may also pursue sanctions authorized by Iowa Code section 502.412.

**50.10(10)** Registration exemption for merger and acquisition brokers.

*a. Definitions.* For purposes of rule 191—50.10(502), in addition to the definitions set forth in rule 191—50.1(502), the following definitions apply:

(1) “*Control*” 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 meets at least one of the following conditions:

1. Is a director, general partner, member, or manager of a limited liability company, or officer exercising executive responsibility (or similar status or functions).
2. Has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities.
3. In the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital.

(2) “*Eligible privately held company*” means a company that meets both of the following conditions:

1. The company does not have any class of securities:
  - Registered, or required to be registered, pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 781); or
  - For which the company files, or is required to file, periodic information, documents, and reports pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 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):

- The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25 million.
- The gross revenues of the company are less than \$250 million.

(3) “*Merger and acquisition broker*” means any broker-dealer and any person that is associated with a broker-dealer:

1. That is engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company; and
  - That is thus engaged regardless of whether that broker-dealer acts on behalf of a seller or buyer; and
  - That is thus engaged through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company; and

2. That meets both of the following conditions:

- The broker-dealer reasonably believes 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
- If any person offered securities in exchange for securities or assets of the eligible privately held company, such person will, prior to becoming legally bound to consummate the transaction, receive or have reasonable access to both of the following:

- o 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
- o If the financial statements of the issuer are audited, reviewed or compiled, all of the following:

- ◆ Any related statement by the independent accountant;
- ◆ A balance sheet dated not more than 120 days before the date of the exchange offer;
- ◆ Information pertaining to the management, business, and results of operations for the period covered by the foregoing financial statements; and
- ◆ Any material loss contingencies of the issuer.

(4) “*Public shell company*” means a company that, at the time of a transaction with an eligible privately held company, meets all three of the following conditions:

1. Has any class of securities registered, or required to be registered, with the SEC pursuant to the Securities Exchange Act of 1934 (15 U.S.C. Section 781), or with respect to which the company files,

or is required to file, periodic information, documents, and reports pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

2. Has no or nominal operations.
3. Has assets consisting of one of the following:
  - No or nominal assets.
  - Cash and cash equivalents.
  - Any amount of cash and cash equivalents and nominal other assets.

*b. Merger and acquisition broker exemption from registration requirements.*

(1) Exemption. Except as provided in subparagraphs 50.10(10)“b”(2) and (3), a merger and acquisition broker is exempt from the broker-dealer registration requirements and procedures of Iowa Code sections 502.401 and 502.406.

(2) Activities not exempt. A merger and acquisition broker is not exempt from the broker-dealer registration requirements of Iowa Code sections 502.401 and 502.406 if the merger and acquisition 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 the Securities Exchange Act of 1934 (15 U.S.C. Section 781) or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(d)).

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

(3) Disqualifications. A merger and acquisition broker is not exempt from registration under this subrule if the merger and acquisition broker is subject to any of the following:

1. Suspension or revocation of registration under the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b)(4));

2. A statutory disqualification described in the Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(39));

3. A disqualification under the rules adopted by the SEC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. Section 77d note)); or

4. A final order described in the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(b)(4)(H)).

(4) Rule of construction. Nothing in this subrule shall be construed to limit any other authority of the administrator to exempt any person, or any class of persons, from Iowa Code chapter 502 or from any provision of this chapter.

*c. Inflation adjustment.* On July 1, 2023, and every five years thereafter, each dollar amount in 50.10(10)“a”(2)“2” shall be adjusted by the following calculation, and the dollar amount determined under the calculation shall be rounded to the nearest multiple of \$100,000:

- (1) 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 such index (or successor index) for the calendar year ending December 31, 2017; and

- (2) Multiplying the dollar amount in 50.10(10)“a”(2)“2” by the quotient obtained under subparagraph 50.10(10)“c”(1), above.

This rule is intended to implement Iowa Code section 502.411(2).

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