

Alliance of M&A Advisors

Winter Bulletin Beat

AMAA to Host National Conference in Orlando

Special points of interest:

- AMAA 2005 Winter Conference in Orlando, FL January 19–21, 2005.
- CM&A Credentialing Program hosted by NYU June 14–17, 2005.
- Want to make the most of your membership? Join a committee! Call 877-844-2535 today.

The AMAA is excited to be hosting M&A On The Upswing the 2005 Winter Conference at the Hilton in the Walt Disney World Resort January 19–21, 2005.

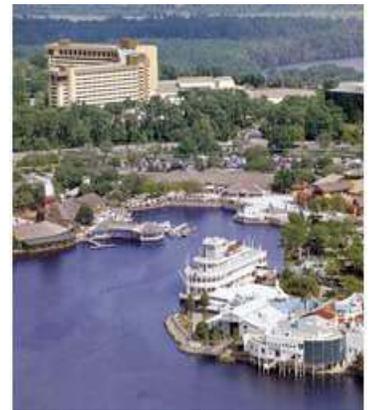
The conference's focus is how our members can capitalize on the flurry of M&A activity in the marketplace while doing more for their clients.

Here are a few highlights from the conference:

- Deal Expo—Members and attendees are invited to share information on their recently completed or current deals with each other and a select number of Private Equity Groups.

- Rob Slee of Robertson Foley is presenting on a distinctly new approach to help clients make sound investment and financing decisions in the private capital markets.
- Shannon Pratt will be discussing seller's v. buyer's perception in the value of a business.
- Robert D'Loren of UCC Capital and Richard Rudder of Baker & McKenzie will address financing for the service and intellectual property business.

Also, plan on staying an extra night so you can play in the AMAA's first golf outing at Disney World's beautiful Lake Buena Vista Golf Course on January 22.



The Hilton is located adjacent to Downtown Disney home of Pleasure Island, Disney's Westside, and The Marketplace.

If you haven't registered yet, there is still time and flights are cheap. Go to www.amaaonline.org today to reserve your spot at the AMAA 2005 Winter Conference.



Nancy Horton

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Member Spotlight: Nancy Horton

Nancy is a principal at AKT, joining in 1991 to establish an outsourced controller/CFO service area. This group provides a variety of financial services to small and mid-sized companies, including outsourced accounting staff, software selection and implementation, and business transitions transactional work and CFO consultations.

Nancy joined AKT after 9 years with an international accounting firm. She has experience with a wide variety of industries, including agribusiness, manufacturers, food processors, and distributors. Nancy is a CPA and Registered Investment Advisor, and holds a business degree in accounting from the University of Portland. She regularly speaks on

financial topics and has published articles.

Nancy also serves on the Executive Board of AMAA as the Membership Chair. She has been instrumental in redeveloping the AMAA member benefits for 2005.

Regulatory and Licensing Requirements for M&A Professionals

By: James W. Cornell, CBC, CTP, CM&A, CBA, CRA, CPP

So you got the deal done, and now its time for the reward, adulation and admiration of your client and contemporaries, and payday! After all, the Seller – your long time business friend, and his attorney – with whom you have shared a solid professional relationship for 10 years - have been thrilled with your work, and quite happy at the result of the deal. Now, traveling with them back to the East Coast after the closing on the red eye, you finally are able to let out that sigh of relief.

As you relax, your friend says, “Well Lou, thanks for everything you have done to make this deal happen. The only thing left to do is to get you paid.” As the peaceful and contented thought of that acknowledgement settles in, the attorney speaks up, “John, I am duty bound to tell you something. I don’t believe Lou is registered as a Broker Dealer or has a license held by one, nor does he have a real estate license in our state. Without them, you don’t have to pay him...” “Lou, is that right, you don’t have a securities license?” “Well John, no I don’t, but I don’t need one, this wasn’t trading stock in a public company...and your real estate was only one part of the deal...!” Your argument falls on deaf ears as the attorney reiterates his position, and your friend reflects on what he will do with this newly found windfall. A moment later, “Lou, if you’re not legally entitled to be paid, then I really have no choice, I won’t be paying you the \$550,000 fee you are due. Sorry.”

It’s going to be a long flight home!

This story was told by one of our respected members as he recounted an event that happened to a friend. In the end, the M&A professional was paid \$300k. In the end.

The Securities Exchange Act of 1934, state real property brokerage laws and business brokerage statutes in some states are the domain within which the activities of M&A professionals fall. Given the need for AMAA members to have a clear understanding of the requirements with which they must comply, the AMAA board established the Licensure Task Force a meeting of the Board of AMAA in the Spring 2004.

“The purpose of the Special Task Force on Licensure is to investigate the licensure requirements for M&A work within the jurisdictions of the members of the AMAA. Within the United States, this will include an examination of state and federal licensure requirements as well as any significant variances that may be discovered within municipal statutes. The investigation will include requirements for sale of a business or business segment, acquisition, or capital sourcing engagements. Information obtained through AMAA members and other industry sources will be used to guide the committee to appropriate authority within state and federal statute and regulatory agencies.”

The initial actions of the task force were to:

1. Initiate a state by state and federal investigation of requirements, through literature review and contact with licensing authorities
2. Poll the AMAA membership for leads and information
3. Compile and deliver a preliminary report to the membership
4. Complete and publish findings and recommendation by end of calendar 2004

Throughout this year, we identified, collected, analyzed and synthesized a substantial body of relevant work covering the challenges facing AMAA members. From this research, and numerous consultative discussions and interviews with experts and knowledgeable professionals in the industry that have studied this issue, we have prepared an initial report and recommendation to the AMAA board that was delivered in September 2004.

There seems to be universal agreement on a number of issues facing M&A professionals.

- If there is any participation in negotiation or consummation of a transaction that involves capital stock, and there is a contingent fee tied to success and price, a securities license, Broker-Dealer (B/D) registration is required.
- Even if in possession of a B/D registration, compliance with real estate licensure requirements (or business broker licensing statutes like Illinois) is still required.

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• The penalties if found to be non-compliant are sufficiently onerous for professionals engaged in the M&A activity to any significant degree, that the financial consequences can be substantial. These consequences can include:

- Rescission of a purchasers obligation to buy
- Potential for a purchase itself to be rescinded post closing
- Consequential damages
- Disgorgement of fees earned
- Inability to pursue – for lack of statutory standing – the collection of a fee.
- The more qualified you are (e.g. CPA, CM&A, prior SEC licensing, etc), the more likely that your activities will be construed as requiring B/D registration.
- For the past 15 years, SEC position and clarity on the issue has been quite limited, although one case emerges as central in most No Action letters and enforcement cases (IBEC). No Action letters are the basis of current regulatory interpretation. Scrutiny of transactions involving trading of substantially all of the interest in the capital stock of a closely held firm brought about by a third party has been limited.
- However, as time elapses, cases build, regulatory scrutiny increases and volume of transactions mount. It is highly likely that the regulatory environment will become even more stringent in the years to come.

Since the report to the board was submitted, the Licensure Task Force has continued forward to develop the information necessary for AMAA members to make their own informed determination of what is required of them. We have also begun the process of examining what specific Broker Dealer options can be made available for those members that conclude that their activities require registration, and how AMAA can aide in forging a unique and beneficial solution for members that is cost effective and will provide a forum for compliance with applicable statutes.

While this work is ongoing, we do expect to make a presentation at the member roundtable at the Winter Conference in Orlando. We are working on a final report to the membership which is scheduled to be published in February 2005. In the interim, any member desiring further information is encouraged to contact the author.

The situation for M&A professionals may have been best summed up by Craig McCrohon, Partner in the law firm of Holland & Knight LLC. when he titled his presentation covering “selected laws regulating business brokers and intermediaries” for the summer AMAA conference in Chicago. At the end of the day, it’s all about “Getting Paid and Staying Out Of Jail”

About the Author: James W. Cornell MBA, CBC, CM&A, CTP, CBA, CRA, CPP – West Seneca, NY, is President of Praxiis Business Advisors. He also serves as the as the Chairman of the AMAA Licensure Task Force. He can be contacted by e-mail at cornelljim@praxiis.com.

“At the end of the day, it’s all about ‘Getting Paid and Staying Out of Jail.’”



Jim Cornell



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The Alliance of M&A Advisors (AMAA) exists to provide the credibility and tools to better equip professional service providers focused upon assisting business owners maximize value when they acquire, finance, structure, merge and sell businesses.

Ultimately, AMAA's purpose is to meet the needs of mid-market business owners who require guidance and assistance to accomplish their goals.

New AMAA Members Since August 2004

Gregory	Balden	Alliance Equity, Inc.	Seattle	WA
Wil	Becker	Chartwell Financial Advisory	Minneapolis	MN
Andrew	Bianco	Strategic Advisors, Inc.	Canonsburg	PA
Jeffrey	Bottomley	Alliance Equity, Inc.	N.E. Poulsbo	WA
Thomas	Bunting	Briggs, Bunting & Dougherty, LLP	Philadelphia	PA
Joseph	Carpinelli	Telcordia Technologies	Piscataway	NJ
Michael	Cohen	Janes Capital Partners, Inc.	Los Angeles	CA
Ron	Dersch	DAI Capital Advisors Inc.	St. Albert	
Gordon	Dihle	Spencer Edwards Investments	Greenwood Village	CO
Jason	Dunlap		Granite Bay	CA
Dave	Eichenlaub	Strategic Advisors, Inc.	Canonsburg	PA
Ronald	Fields	Dixon Hughes, PLLC	Spartanburg	SC
Ruben	Flores	The Flores CPA Firm	San Antonio	TX
Joseph	Gawzner	Zee Medical	Irvine	CA
Joan	Gruber-Ridley	Exit Solutions, Inc.	Dallas	TX
Phil	Hamilton	Hamilton Valuation Group, Inc.	Austin	TX
Matthew	Hawkins	Kiemle & Hagood Company	Spokane	WA
Andrew	Hays	Strategic Advisors, Inc.	Canonsburg	PA
Brenan	Hoftadter	SMA Advisors	Port St. Lucie	FL
Daniel	Holbert	Equity Ltd.	Grand Rapids	MI
Erin	Hollis	Accountancy Associates, LLC	Buffalo Grove	IL
Steven	Hyden	Hyden Capital Inc.	Tampa	FL
Sunil	Jaggi	Eaton Corp.	Galesburg	MI
Scott	Juetten	Alliance Equity, Inc.	Sammamish	WA
Walter	Jurek	Quality Services Company	Las Vegas	NV
Alan	Kersh	Savoy Capital Advisors, Inc.	New York	NY
Wade	Kruse	Grant Thorton	Charlotte	NC
Shari	Overstreet	Vcon, Inc.	Austin	TX
Lawrence	Pignataro	Pignataro Financial Group	Depew	NY
Steven	Pinsky	JH Cohn LLP	New York	NY
Stanley	Pollock	Professional Practice Planners, Inc.	McKeesport	PA
Danny	Qubain	SMA Advisors	Port St. Lucie	FL
Gregory	Porter	Berntson Porter & Co., PLLC	Bellevue	WA
Timothy	Rhine	Corporate Capital Partners	Escondido	CA
John	Roney	ACT Consultants, Inc.	Santa Rosa	CA
James	Roof	Sagemark Consulting	Cary	NC
William	Ross	Russell Corporation	LaGrange	GA
Daniel	Sarver	Strategic Advisors, Inc.	Canonsburg	PA
Larry	Smith	Northern Capital Group	Ashland	MA
Rex	Struble	Stonebridge Equity, LLC	Grand Blanc	MI
Allan	VanderHamm	Berntson Porter & Co., PLLC	Bellevue	WA
Michael	Weiss	Alliance Equity, Inc.	Poulsbo	WA