



# **Are Your Business Practices Keeping You Out of Trouble?**

**July 20, 2022**





## Lisa Lanham

- Lisa Lanham's practice focuses on financial services matters related to the state licenses and federal approvals necessary to conduct business for a variety of asset classes and market participants. Her clients include, but are not limited to, residential and commercial mortgage brokers, lenders, servicers, and loan fulfillment providers; student, consumer, and solar loan lenders and servicers; entities offering retail installment contracts for the purchase of consumer goods; marketplace lenders; and investors who engage in secondary market activities related to these business lines. She also works with early-stage Fintech companies in all of these business lines, along with other business lines involving money transmission, crypto, and blockchain technology, to help develop products mindful of state licensing and regulatory compliance requirements and obtain and maintain any required state licenses and approvals necessary to engage in business.
- Lisa has robust experience and positive working relationships with key regulators, including the New York State Department of Financial Services, and leverages them to usher her clients through the process of obtaining and maintaining any required licenses and approvals, completing audits and examinations, explaining difficult disclosure issues, and reporting changes of ownership, executive management, and qualifying individuals.
- Lisa is proficient at all facets of the NMLS, including submissions and amendments of company and branch application forms and electronic surety bonds, transitions and renewals of state licenses, submissions of mortgage call reports and money services business call reports, and coordination of larger transactions affecting multiple state licenses.

# Mergers & Acquisitions – Asset Purchases vs. Equity Purchases

---

- What are the differences between an “asset purchase” and an “equity purchase”?
  - Asset Purchase – The purchaser agrees to buy certain of the company’s assets, including things like real estate, office plants, equipment, machinery, stocks, goodwill, existing contracts, etc. The agreement specifies all of the assets and liabilities the purchaser will acquire. The seller retains everything else. Title to all of the specified assets are transferred to the buyer, and the seller remains the legal owner of the company.
  - Equity Purchase – The buyer purchases stock or other equity interests and takes over as the legal owner of the business entity. It entails a beneficial transfer of assets and liabilities from the seller to the buyer by a transfer of legal ownership of the company to the buyer.

# Mergers & Acquisitions – Purchaser Beware!

---

- What exactly are you buying?
  - Multiple business lines?
  - Multiple product lines?
  - A state-company?
  - Certain assets only?
- Who do you want to be the buyer? Consider:
  - Regulatory reporting requirements?
  - Board of Director or Executive Officer changes?
  - Current and future licensing requirements?
  - Are certain people or entities wearing “multiple hats”?

# Mergers & Acquisitions – Diligence, Diligence, Diligence!

---

Before closing the deal, always:

- Consider regulatory reporting obligations (*i.e.*, prior approval, prior notice, post-closing notification) for any state licenses or federal approvals that the entity maintains.
- Conduct a thorough regulatory compliance due diligence to uncover any issues like consumer complaints/resolutions, pending/prior regulatory enforcement actions and litigation, policies and procedures, etc.
- [ROSS – ANYTHING TO ADD?]

# Mergers & Acquisitions – Closing the Deal

---

After you uncork the , adhere to the following best practices to preserve the corporate shield:

- Observe corporate formalities in your business practices.
- Avoid piercing the corporate veil by:
  - Commingling funds and/or assets;
  - Failing to segregate funds;
  - Diverting funds or assets;
  - Allowing a shareholder to treat corporate assets as his/her own;
  - Failing to maintain board minutes;
  - Having a total absence of corporate assets;
  - Being under capitalized; and
  - Failing to maintain arm's length relationships among related entities.

# Final Thoughts

---

- Monitor Industry Changes:
  - Keep up with statutory and regulatory changes that could impact your business.
  - Regularly check for formal regulator guidance or re-interpretation of former regulatory positions.
  - Keep up with litigation, enforcement, and examination trends.
- Be adaptable!



# Questions/Discussion

If you would like to ask a question, you can ASK or type your question into the CHAT feature NOW.