

Union Calendar No. 318

115TH CONGRESS
1ST SESSION

H. R. 477

[Report No. 115–431]

To amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 12, 2017

Mr. HUIZENGA (for himself, Mr. POSEY, and Mr. HIGGINS of New York) introduced the following bill; which was referred to the Committee on Financial Services

NOVEMBER 30, 2017

Additional sponsors: Mr. JOYCE of Ohio, Mr. BRADY of Texas, Mr. ROSS, Mr. LUCAS, Mr. YOUNG of Iowa, Ms. LOFGREN, Mr. BUDD, and Mr. SESSIONS

NOVEMBER 30, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Merg-
 5 ers, Acquisitions, Sales, and Brokerage Simplification Act
 6 of 2017”.

7 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**
 8 **QUISITION BROKERS.**

9 Section 15(b) of the Securities Exchange Act of 1934
 10 (15 U.S.C. 78o(b)) is amended by adding at the end the
 11 following:

12 “(13) REGISTRATION EXEMPTION FOR MERGER
 13 AND ACQUISITION BROKERS.—

14 “(A) IN GENERAL.—Except as provided in
 15 subparagraph (B), an M&A broker shall be ex-
 16 empt from registration under this section.

17 “(B) EXCLUDED ACTIVITIES.—An M&A
 18 broker is not exempt from registration under
 19 this paragraph if such broker does any of the
 20 following:

21 “(i) Directly or indirectly, in connec-
 22 tion with the transfer of ownership of an
 23 eligible privately held company, receives,
 24 holds, transmits, or has custody of the

1 funds or securities to be exchanged by the
2 parties to the transaction.

3 “(ii) Engages on behalf of an issuer in
4 a public offering of any class of securities
5 that is registered, or is required to be reg-
6 istered, with the Commission under section
7 12 or with respect to which the issuer files,
8 or is required to file, periodic information,
9 documents, and reports under subsection
10 (d).

11 “(iii) Engages on behalf of any party
12 in a transaction involving a public shell
13 company.

14 “(C) DISQUALIFICATIONS.—An M&A
15 broker is not exempt from registration under
16 this paragraph if such broker is subject to—

17 “(i) suspension or revocation of reg-
18 istration under paragraph (4);

19 “(ii) a statutory disqualification de-
20 scribed in section 3(a)(39);

21 “(iii) a disqualification under the
22 rules adopted by the Commission under
23 section 926 of the Investor Protection and
24 Securities Reform Act of 2010 (15 U.S.C.
25 77d note); or

1 “(iv) a final order described in para-
2 graph (4)(H).

3 “(D) RULE OF CONSTRUCTION.—Nothing
4 in this paragraph shall be construed to limit
5 any other authority of the Commission to ex-
6 empt any person, or any class of persons, from
7 any provision of this title, or from any provision
8 of any rule or regulation thereunder.

9 “(E) DEFINITIONS.—In this paragraph:

10 “(i) CONTROL.—The term ‘control’
11 means the power, directly or indirectly, to
12 direct the management or policies of a
13 company, whether through ownership of
14 securities, by contract, or otherwise. There
15 is a presumption of control for any person
16 who—

17 “(I) is a director, general part-
18 ner, member or manager of a limited
19 liability company, or officer exercising
20 executive responsibility (or has similar
21 status or functions);

22 “(II) has the right to vote 20
23 percent or more of a class of voting
24 securities or the power to sell or direct

1 the sale of 20 percent or more of a
2 class of voting securities; or

3 “(III) in the case of a partner-
4 ship or limited liability company, has
5 the right to receive upon dissolution,
6 or has contributed, 20 percent or
7 more of the capital.

8 “(ii) ELIGIBLE PRIVATELY HELD
9 COMPANY.—The term ‘eligible privately
10 held company’ means a privately held com-
11 pany that meets both of the following con-
12 ditions:

13 “(I) The company does not have
14 any class of securities registered, or
15 required to be registered, with the
16 Commission under section 12 or with
17 respect to which the company files, or
18 is required to file, periodic informa-
19 tion, documents, and reports under
20 subsection (d).

21 “(II) In the fiscal year ending
22 immediately before the fiscal year in
23 which the services of the M&A broker
24 are initially engaged with respect to
25 the securities transaction, the com-

pany meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

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

“(bb) The gross revenues of the company are less than \$250,000,000.

“(iii) M&A BROKER.—The term ‘M&A broker’ means a 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 the 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 that—

1 “(I) upon consummation of the
2 transaction, any person acquiring se-
3 curities or assets of the eligible pri-
4 vately held company, acting alone or
5 in concert, will control and, directly or
6 indirectly, will be active in the man-
7 agement of the eligible privately held
8 company or the business conducted
9 with the assets of the eligible privately
10 held company; and

11 “(II) if any person is offered se-
12 curities in exchange for securities or
13 assets of the eligible privately held
14 company, such person will, prior to
15 becoming legally bound to consum-
16 mate the transaction, receive or have
17 reasonable access to the most recent
18 fiscal year-end financial statements of
19 the issuer of the securities as custom-
20 arily prepared by the management of
21 the issuer in the normal course of op-
22 erations and, if the financial state-
23 ments of the issuer are audited, re-
24 viewed, or compiled, any related state-
25 ment by the independent accountant,

1 a balance sheet dated not more than
2 120 days before the date of the offer,
3 and information pertaining to the
4 management, business, results of op-
5 erations for the period covered by the
6 foregoing financial statements, and
7 material loss contingencies of the
8 issuer.

9 “(iv) PUBLIC SHELL COMPANY.—The
10 term ‘public shell company’ is a company
11 that at the time of a transaction with an
12 eligible privately held company—

13 “(I) has any class of securities
14 registered, or required to be reg-
15 istered, with the Commission under
16 section 12 or that is required to file
17 reports pursuant to subsection (d);

18 “(II) has no or nominal oper-
19 ations; and

20 “(III) has—

21 “(aa) no or nominal assets;

22 “(bb) assets consisting solely
23 of cash and cash equivalents; or

24 “(cc) assets consisting of
25 any amount of cash and cash

1 equivalents and nominal other as-
2 sets.

3 “(F) INFLATION ADJUSTMENT.—

4 “(i) IN GENERAL.—On the date that
5 is 5 years after the date of the enactment
6 of the Small Business Mergers, Acquisi-
7 tions, Sales, and Brokerage Simplification
8 Act of 2017, and every 5 years thereafter,
9 each dollar amount in subparagraph
10 (E)(ii)(II) shall be adjusted by—

11 “(I) dividing the annual value of
12 the Employment Cost Index For
13 Wages and Salaries, Private Industry
14 Workers (or any successor index), as
15 published by the Bureau of Labor
16 Statistics, for the calendar year pre-
17 ceding the calendar year in which the
18 adjustment is being made by the an-
19 nual value of such index (or suc-
20 cessor) for the calendar year ending
21 December 31, 2012; and

22 “(II) multiplying such dollar
23 amount by the quotient obtained
24 under subclause (I).

1 “(ii) ROUNDING.—Each dollar
2 amount determined under clause (i) shall
3 be rounded to the nearest multiple of
4 \$100,000.”.

5 **SEC. 3. EFFECTIVE DATE.**

6 This Act and any amendment made by this Act shall
7 take effect on the date that is 90 days after the date of
8 the enactment of this Act.

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