

115TH CONGRESS  
1ST SESSION

# H. R. 477

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IN THE SENATE OF THE UNITED STATES

DECEMBER 11, 2017

Received; read twice and referred to the Committee on Banking, Housing, and  
Urban Affairs

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**  
6 **QUISITION BROKERS.**

7 Section 15(b) of the Securities Exchange Act of 1934  
8 (15 U.S.C. 78o(b)) is amended by adding at the end the  
9 following:

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

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

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

19 “(i) Directly or indirectly, in connec-  
20 tion with the transfer of ownership of an  
21 eligible privately held company, receives,  
22 holds, transmits, or has custody of the  
23 funds or securities to be exchanged by the  
24 parties to the transaction.

25 “(ii) Engages on behalf of an issuer in  
26 a public offering of any class of securities

1 that is registered, or is required to be reg-  
2 istered, with the Commission under section  
3 12 or with respect to which the issuer files,  
4 or is required to file, periodic information,  
5 documents, and reports under subsection  
6 (d).

7 “(iii) Engages on behalf of any party  
8 in a transaction involving a shell company,  
9 other than a business combination related  
10 shell company.

11 “(iv) Directly, or indirectly through  
12 any of its affiliates, provides financing re-  
13 lated to the transfer of ownership of an eli-  
14 gible privately held company.

15 “(v) Assists any party to obtain fi-  
16 nancing from an unaffiliated third party  
17 without—

18 “(I) complying with all other ap-  
19 plicable laws in connection with such  
20 assistance, including, if applicable,  
21 Regulation T (12 CFR 220 et seq.);  
22 and

23 “(II) disclosing any compensation  
24 in writing to the party.

1           “(vi) Represents both the buyer and  
2           the seller in the same transaction without  
3           providing clear written disclosure as to the  
4           parties the broker represents and obtaining  
5           written consent from both parties to the  
6           joint representation.

7           “(vii) Facilitates a transaction with a  
8           group of buyers formed with the assistance  
9           of the M&A broker to acquire the eligible  
10          privately held company.

11          “(viii) Engages in a transaction in-  
12          volving the transfer of ownership of an eli-  
13          gible privately held company to a passive  
14          buyer or group of passive buyers. For pur-  
15          poses of the preceding sentence, a buyer  
16          that is actively involved in managing the  
17          acquired company is not a passive buyer,  
18          regardless of whether such buyer is itself  
19          owned by passive beneficial owners.

20          “(ix) Binds a party to a transfer of  
21          ownership of an eligible privately held com-  
22          pany.

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

1           “(i) suspension or revocation of reg-  
2           istration under paragraph (4);

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

5           “(iii) a disqualification under the  
6           rules adopted by the Commission under  
7           section 926 of the Investor Protection and  
8           Securities Reform Act of 2010 (15 U.S.C.  
9           77d note); or

10           “(iv) a final order described in para-  
11           graph (4)(H).

12           “(D) RULE OF CONSTRUCTION.—Nothing  
13           in this paragraph shall be construed to limit  
14           any other authority of the Commission to ex-  
15           empt any person, or any class of persons, from  
16           any provision of this title, or from any provision  
17           of any rule or regulation thereunder.

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

19           “(i) BUSINESS COMBINATION RE-  
20           LATED SHELL COMPANY.—The term ‘busi-  
21           ness combination related shell company’  
22           means a shell company that is formed by  
23           an entity that is not a shell company—

24           “(I) solely for the purpose of  
25           changing the corporate domicile of

1 that entity solely within the United  
2 States; or

3 “(II) solely for the purpose of  
4 completing a business combination  
5 transaction (as defined under section  
6 230.165(f) of title 17, Code of Fed-  
7 eral Regulations) among one or more  
8 entities other than the company itself,  
9 none of which is a shell company.

10 “(ii) 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 corporate officer  
20 of a corporation or limited liability  
21 company, and exercises executive re-  
22 sponsibility (or has similar status or  
23 functions);

24 “(II) has the right to vote 25  
25 percent or more of a class of voting

1 securities or the power to sell or direct  
2 the sale of 25 percent or more of a  
3 class of voting securities; or

4 “(III) in the case of a partner-  
5 ship or limited liability company, has  
6 the right to receive upon dissolution,  
7 or has contributed, 25 percent or  
8 more of the capital.

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

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

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

1 the securities transaction, the com-  
2 pany meets either or both of the fol-  
3 lowing conditions (determined in ac-  
4 cordance with the historical financial  
5 accounting records of the company):

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

10 “(bb) The gross revenues of  
11 the company are less than  
12 \$250,000,000.

13 For purposes of this subclause, the  
14 Commission may by rule modify the  
15 dollar figures if the Commission deter-  
16 mines that such a modification is nec-  
17 essary or appropriate in the public in-  
18 terest or for the protection of inves-  
19 tors.

20 “(iv) M&A BROKER.—The term ‘M&A  
21 broker’ means a broker, and any person  
22 associated with a broker, engaged in the  
23 business of effecting securities transactions  
24 solely in connection with the transfer of  
25 ownership of an eligible privately held com-

1           pany, regardless of whether the broker acts  
2           on behalf of a seller or buyer, through the  
3           purchase, sale, exchange, issuance, repur-  
4           chase, or redemption of, or a business com-  
5           bination involving, securities or assets of  
6           the eligible privately held company, if the  
7           broker reasonably believes that—

8                   “(I) upon consummation of the  
9                   transaction, any person acquiring se-  
10                  curities or assets of the eligible pri-  
11                  vately held company, acting alone or  
12                  in concert, will control and, directly or  
13                  indirectly, will be active in the man-  
14                  agement of the eligible privately held  
15                  company or the business conducted  
16                  with the assets of the eligible privately  
17                  held company; and

18                  “(II) if any person is offered se-  
19                  curities in exchange for securities or  
20                  assets of the eligible privately held  
21                  company, such person will, prior to  
22                  becoming legally bound to consum-  
23                  mate the transaction, receive or have  
24                  reasonable access to the most recent  
25                  fiscal year-end financial statements of

1 the issuer of the securities as custom-  
2 arily prepared by the management of  
3 the issuer in the normal course of op-  
4 erations and, if the financial state-  
5 ments of the issuer are audited, re-  
6 viewed, or compiled, any related state-  
7 ment by the independent accountant,  
8 a balance sheet dated not more than  
9 120 days before the date of the offer,  
10 and information pertaining to the  
11 management, business, results of op-  
12 erations for the period covered by the  
13 foregoing financial statements, and  
14 material loss contingencies of the  
15 issuer.

16 “(v) SHELL COMPANY.—The term  
17 ‘shell company’ means a company that at  
18 the time of a transaction with an eligible  
19 privately held company—

20 “(I) has no or nominal oper-  
21 ations; and

22 “(II) has—

23 “(aa) no or nominal assets;

24 “(bb) assets consisting solely  
25 of cash and cash equivalents; or

1                   “(cc) assets consisting of  
2                   any amount of cash and cash  
3                   equivalents and nominal other as-  
4                   sets.

5                   “(F) INFLATION ADJUSTMENT.—

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

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

1                   “(II) multiplying such dollar  
2                   amount by the quotient obtained  
3                   under subclause (I).

4                   “(ii) ROUNDING.—Each dollar  
5                   amount determined under clause (i) shall  
6                   be rounded to the nearest multiple of  
7                   \$100,000.”.

8 **SEC. 3. EFFECTIVE DATE.**

9           This Act and any amendment made by this Act shall  
10   take effect on the date that is 90 days after the date of  
11   the enactment of this Act.

          Passed the House of Representatives December 7,  
2017.

Attest:

KAREN L. HAAS,  
*Clerk.*