

116TH CONGRESS  
1ST SESSION

# H. R. 3768

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2019

Mr. BUDD introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

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 “Unlocking Capital for  
5 Small Businesses Act of 2019”.

6 **SEC. 2. SAFE HARBORS FOR PRIVATE PLACEMENT BRO-**  
7 **KERS AND FINDERS.**

8 (a) IN GENERAL.—Section 15 of the Securities Ex-  
9 change Act of 1934 (15 U.S.C. 78o) is amended by adding  
10 at the end the following:

1       “(p) PRIVATE PLACEMENT BROKER SAFE HAR-  
2 BOR.—

3           “(1) REGISTRATION REQUIREMENTS.—Not  
4 later than 180 days after the date of the enactment  
5 of this subsection the Commission shall promulgate  
6 regulations with respect to private placement brokers  
7 that are no more stringent than those imposed on  
8 funding portals.

9           “(2) NATIONAL SECURITIES ASSOCIATIONS.—  
10 Not later than 180 days after the date of the enact-  
11 ment of this subsection the Commission shall pro-  
12 mulgate regulations that require the rules of any na-  
13 tional securities association to allow a private place-  
14 ment broker to become a member of such national  
15 securities association subject to reduced membership  
16 requirements consistent with this subsection.

17           “(3) DISCLOSURES REQUIRED.—Before effect-  
18 ing a transaction, a private placement broker shall  
19 disclose clearly and conspicuously, in writing, to all  
20 parties to the transaction as a result of the broker’s  
21 activities—

22                   “(A) that the broker is acting as a private  
23 placement broker;

24                   “(B) the amount of any payment or antici-  
25 pated payment for services rendered as a pri-

1 vate placement broker in connection with such  
2 transaction;

3 “(C) the person to whom any such pay-  
4 ment is made;

5 “(D) any beneficial interest in the issuer,  
6 direct or indirect, of the private placement  
7 broker, of a member of the immediate family of  
8 the private placement broker, of an associated  
9 person of the private placement broker, or of a  
10 member of the immediate family of such associ-  
11 ated person.

12 “(4) PRIVATE PLACEMENT BROKER DE-  
13 FINED.—In this subsection, the term ‘private place-  
14 ment broker’ means a person that—

15 “(A) receives transaction-based compensa-  
16 tion—

17 “(i) for effecting a transaction by—

18 “(I) introducing an issuer of se-  
19 curities and a buyer of such securities  
20 in connection with the sale of a busi-  
21 ness effected as the sale of securities;  
22 or

23 “(II) introducing an issuer of se-  
24 curities and a buyer of such securities  
25 in connection with the placement of

1 securities in transactions that are ex-  
2 empt from registration requirements  
3 under the Securities Act of 1933; and

4 “(ii) that is not with respect to—

5 “(I) a class of publicly traded se-  
6 curities;

7 “(II) the securities of an invest-  
8 ment company (as defined in section 3  
9 of the Investment Company Act of  
10 1940); or

11 “(III) a variable or equity-in-  
12 dexed annuity or other variable or eq-  
13 uity-indexed life insurance product;

14 “(B) with respect to a transaction for  
15 which such transaction-based compensation is  
16 received—

17 “(i) does not handle or take posses-  
18 sion of the funds or securities; and

19 “(ii) does not engage in an activity  
20 that requires registration as an investment  
21 adviser under State or Federal law; and

22 “(C) is not a finder as defined under sub-  
23 section (q).

24 “(q) FINDER SAFE HARBOR.—

1           “(1) NONREGISTRATION.—A finder is exempt  
2 from the registration requirements of this Act.

3           “(2) NATIONAL SECURITIES ASSOCIATIONS.—A  
4 finder shall not be required to become a member of  
5 any national securities association.

6           “(3) FINDER DEFINED.—In this subsection, the  
7 term ‘finder’ means a person described in para-  
8 graphs (A) and (B) of subsection (p)(4) that—

9           “(A) receives transaction-based compensa-  
10 tion of equal to or less than \$500,000 in any  
11 calendar year;

12           “(B) receives transaction-based compensa-  
13 tion in connection with transactions that result  
14 in a single issuer selling securities valued at  
15 equal to or less than \$15 million in any cal-  
16 endar year;

17           “(C) receives transaction-based compensa-  
18 tion in connection with transactions that result  
19 in any combination of issuers selling securities  
20 valued at equal to or less than \$30 million in  
21 any calendar year; or

22           “(D) receives transaction-based compensa-  
23 tion in connection with fewer than 16 trans-  
24 actions that are not part of the same offering

1           or are otherwise unrelated in any calendar  
2           year.”.

3           (b) VALIDITY OF CONTRACTS WITH REGISTERED  
4 PRIVATE PLACEMENT BROKERS AND FINDERS.—Section  
5 29 of the Securities Exchange Act (15 U.S.C. 78cc) is  
6 amended by adding at the end the following:

7           “(d) Subsection (b) shall not apply to a contract  
8 made for a transaction if—

9                   “(1) the transaction is one in which the issuer  
10 engaged the services of a broker or dealer that is not  
11 registered under this Act with respect to such trans-  
12 action;

13                   “(2) such issuer received a self-certification  
14 from such broker or dealer certifying that such  
15 broker or dealer is a registered private placement  
16 broker under section 15(p) or a finder under section  
17 15(q); and

18                   “(3) the issuer either did not know that such  
19 self-certification was false or did not have a reason-  
20 able basis to believe that such self-certification was  
21 false.”.

22           (c) REMOVAL OF PRIVATE PLACEMENT BROKERS  
23 FROM DEFINITIONS OF BROKER.—

24                   (1) RECORDS AND REPORTS ON MONETARY IN-  
25 STRUMENTS TRANSACTIONS.—Section 5312 of title

1 31, United States Code, is amended in subsection  
2 (a)(2)(G) by inserting “with the exception of a pri-  
3 vate placement broker as defined in section 15(p)(4)  
4 of the Securities Exchange Act of 1934 (15 U.S.C.  
5 78o(p)(4))” before the semicolon at the end.

6 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
7 tion 3(a)(4) of the Securities Exchange Act of 1934  
8 (15 U.S.C. 78c(a)(4)) is amended by adding at the  
9 end the following:

10 “(G) PRIVATE PLACEMENT BROKERS.—A  
11 private placement broker as defined in section  
12 15(p)(4) is not a broker for the purposes of this  
13 Act.”.

14 **SEC. 3. LIMITATIONS ON STATE LAW.**

15 Section 15(i) of the Securities Exchange Act of 1934  
16 (15 U.S.C. 78o(i)) is amended—

17 (1) by redesignating paragraph (3) as para-  
18 graph (4); and

19 (2) by inserting after paragraph (2) the fol-  
20 lowing:

21 “(3) PRIVATE PLACEMENT BROKERS AND FIND-  
22 ERS.—

23 “(A) IN GENERAL.—No State or political  
24 subdivision thereof may enforce any law, rule,  
25 regulation, or other administrative action that

1 imposes greater registration, audit, financial  
2 recordkeeping, or reporting requirements on a  
3 private placement broker or finder than those  
4 that are required under subsections (p) and (q),  
5 respectively.

6 “(B) DEFINITION OF STATE.—For pur-  
7 poses of this paragraph, the term ‘State’ in-  
8 cludes the District of Columbia and each terri-  
9 tory of the United States.”.

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