

116TH CONGRESS  
1ST SESSION

# H. R. 609

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.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 16, 2019

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

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## 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 2019”.

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

3 Section 15(b) of the Securities Exchange Act of 1934  
4 (15 U.S.C. 78o(b)) is amended by adding at the end the  
5 following:

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

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

11 “(B) EXCLUDED ACTIVITIES.—An M&A  
12 broker is not exempt from registration under  
13 this paragraph if such broker does any of the  
14 following:

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

21 “(ii) Engages on behalf of an issuer in  
22 a public offering of any class of securities  
23 that is registered, or is required to be reg-  
24 istered, with the Commission under section  
25 12 or with respect to which the issuer files,  
26 or is required to file, periodic information,

1 documents, and reports under subsection  
2 (d).

3 “(iii) Engages on behalf of any party  
4 in a transaction involving a shell company,  
5 other than a business combination related  
6 shell company.

7 “(iv) Directly, or indirectly through  
8 any of its affiliates, provides financing re-  
9 lated to the transfer of ownership of an eli-  
10 gible privately held company.

11 “(v) Assists any party to obtain fi-  
12 nancing from an unaffiliated third party  
13 without—

14 “(I) complying with all other ap-  
15 plicable laws in connection with such  
16 assistance, including, if applicable,  
17 Regulation T (12 C.F.R. 220 et seq.);  
18 and

19 “(II) disclosing any compensation  
20 in writing to the party.

21 “(vi) Represents both the buyer and  
22 the seller in the same transaction without  
23 providing clear written disclosure as to the  
24 parties the broker represents and obtaining

1 written consent from both parties to the  
2 joint representation.

3 “(vii) Facilitates a transaction with a  
4 group of buyers formed with the assistance  
5 of the M&A broker to acquire the eligible  
6 privately held company.

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

16 “(ix) Binds a party to a transfer of  
17 ownership of an eligible privately held com-  
18 pany.

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

22 “(i) suspension or revocation of reg-  
23 istration under paragraph (4);

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

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

6           “(iv) a final order described in para-  
7           graph (4)(H).

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

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

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

20                         “(I) solely for the purpose of  
21                         changing the corporate domicile of  
22                         that entity solely within the United  
23                         States; or

24                         “(II) solely for the purpose of  
25                         completing a business combination

1 transaction (as defined under section  
2 230.165(f) of title 17, Code of Fed-  
3 eral Regulations) among one or more  
4 entities other than the company itself,  
5 none of which is a shell company.

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

13 “(I) is a director, general part-  
14 ner, member or manager of a limited  
15 liability company, or corporate officer  
16 of a corporation or limited liability  
17 company, and exercises executive re-  
18 sponsibility (or has similar status or  
19 functions);

20 “(II) has the right to vote 25  
21 percent or more of a class of voting  
22 securities or the power to sell or direct  
23 the sale of 25 percent or more of a  
24 class of voting securities; or

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

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

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

19                   “(II) In the fiscal year ending  
20                   immediately before the fiscal year in  
21                   which the services of the M&A broker  
22                   are initially engaged with respect to  
23                   the securities transaction, the com-  
24                   pany meets either or both of the fol-  
25                   lowing conditions (determined in ac-

1 cordance with the historical financial  
2 accounting records of the company):

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

7 “(bb) The gross revenues of  
8 the company are less than  
9 \$250,000,000.

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

17 “(iv) M&A BROKER.—The term ‘M&A  
18 broker’ means a broker, and any person  
19 associated with a broker, engaged in the  
20 business of effecting securities transactions  
21 solely in connection with the transfer of  
22 ownership of an eligible privately held com-  
23 pany, regardless of whether the broker acts  
24 on behalf of a seller or buyer, through the  
25 purchase, sale, exchange, issuance, repur-

1 chase, or redemption of, or a business com-  
2 bination involving, securities or assets of  
3 the eligible privately held company, if the  
4 broker reasonably believes that—

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

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

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

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

17 “(I) has no or nominal oper-  
18 ations; and

19 “(II) has—

20 “(aa) no or nominal assets;

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

23 “(cc) assets consisting of  
24 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 this paragraph, and every 5 years there-  
7                   after, each dollar amount in subparagraph  
8                   (E)(iii)(II) shall be adjusted by—

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

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

23                  “ (ii) ROUNDING.—Each dollar  
24                  amount determined under clause (i) shall

1                   be rounded to the nearest multiple of  
2                   \$100,000.”.

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

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

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