

117TH CONGRESS
2D SESSION

H. R. 935

IN THE SENATE OF THE UNITED STATES

MAY 12, 2022

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

AN ACT

To amend the Securities Exchange Act of 1934 to exempt
from registration brokers performing services in connec-
tion 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 2021”.

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, period 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 C.F.R. 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.

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

18 “(C) DISQUALIFICATION.—An M&A broker
19 is not exempt from registration under this para-
20 graph if such broker (and if and as applicable,
21 including any officer, director, member, man-
22 ager, partner, or employee of such broker)—

23 “(i) has been barred from association
24 with a broker or dealer by the Commission,

1 any State, or any self-regulatory organiza-
2 tion; or

3 “(ii) is suspended from association
4 with a broker or dealer.

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

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

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

17 “(I) solely for the purpose of
18 changing the corporate domicile of
19 that entity solely within the United
20 States; or

21 “(II) solely for the purpose of
22 completing a business combination
23 transaction (as defined under section
24 230.165(f) of title 17, Code of Fed-
25 eral Regulations) among one or more

1 entities other than the company itself,
2 none of which is a shell company.

3 “(ii) CONTROL.—The term ‘control’
4 means the power, directly or indirectly, to
5 direct the management or policies of a
6 company, whether through ownership of
7 securities, by contract, or otherwise. There
8 is a presumption of control if, upon com-
9 pletion of a transaction, the buyer or group
10 of buyers—

11 “(I) has the right to vote 25 per-
12 cent or more of a class of voting secu-
13 rities or the power to sell or direct the
14 sale of 25 percent or more of a class
15 of voting securities; or

16 “(II) in the case of a partnership
17 or limited liability company, has the
18 right to receive upon dissolution, or
19 has contributed, 25 percent or more
20 of the capital.

21 “(iii) ELIGIBLE PRIVATELY HELD
22 COMPANY.—The term ‘eligible privately
23 held company’ means a privately held com-
24 pany that meets both of the following con-
25 ditions:

1 “(I) The company does not have
2 any class of securities registered, or
3 required to be registered, with the
4 Commission under section 12 or with
5 respect to which the company files, or
6 is required to file, periodic informa-
7 tion, documents, and reports under
8 subsection (d).

9 “(II) In the fiscal year ending
10 immediately before the fiscal year in
11 which the services of the M&A broker
12 are initially engaged with respect to
13 the securities transaction, the com-
14 pany meets either or both of the fol-
15 lowing conditions (determined in ac-
16 cordance with the historical financial
17 accounting records of the company):

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

22 “(bb) The gross revenues of
23 the company are less than
24 \$250,000,000.

1 For purposes of this subclause, the
2 Commission may by rule modify the
3 dollar figures if the Commission deter-
4 mines that such a modification is nec-
5 essary or appropriate in the public in-
6 terest or for the protection of inves-
7 tors.

8 “(iv) M&A BROKER.—The term ‘M&A
9 broker’ means a broker, and any person
10 associated with a broker, engaged in the
11 business of effecting securities transactions
12 solely in connection with the transfer of
13 ownership of an eligible privately held com-
14 pany, regardless of whether the broker acts
15 on behalf of a seller or buyer, through the
16 purchase, sale, exchange, issuance, repur-
17 chase, or redemption of, or a business com-
18 bination involving, securities or assets of
19 the eligible privately held company, if the
20 broker reasonably believes that—

21 “(I) upon consummation of the
22 transaction, any person acquiring se-
23 curities or assets of the eligible pri-
24 vately held company, acting alone or
25 in concert—

1 “(aa) will control the eligible
2 privately held company or the
3 business conducted with the as-
4 sets of the eligible privately held
5 company; and

6 “(bb) directly or indirectly,
7 will be active in the management
8 of the eligible privately held com-
9 pany or the business conducted
10 with the assets of the eligible pri-
11 vately held company, including
12 without limitation, for example,
13 by—

14 “(AA) electing execu-
15 tive officers;

16 “(BB) approving the
17 annual budget;

18 “(CC) serving as an ex-
19 ecutive or other executive
20 manager; or

21 “(DD) carrying out
22 such other activities as the
23 Commission may, by rule,
24 determine to be in the public
25 interest; and

1 “(II) if any person is offered se-
2 curities in exchange for securities or
3 assets of the eligible privately held
4 company, such person will, prior to
5 becoming legally bound to consum-
6 mate the transaction, receive or have
7 reasonable access to the most recent
8 fiscal year-end financial statements of
9 the issuer of the securities as custom-
10 arily prepared by the management of
11 the issuer in the normal course of op-
12 erations and, if the financial state-
13 ments of the issuer are audited, re-
14 viewed, or compiled, any related state-
15 ment by the independent accountant,
16 a balance sheet dated not more than
17 120 days before the date of the offer,
18 and information pertaining to the
19 management, business, results of op-
20 erations for the period covered by the
21 foregoing financial statements, and
22 material loss contingencies of the
23 issuer.

24 “(v) SHELL COMPANY.—The term
25 ‘shell company’ means a company that at

1 the time of a transaction with an eligible
2 privately held company—

3 “(I) has no or nominal oper-
4 ations; and

5 “(II) has—

6 “(aa) no or nominal assets;

7 “(bb) assets consisting solely
8 of cash and cash equivalents; or

9 “(cc) assets consisting of
10 any amount of cash and cash
11 equivalents and nominal other as-
12 sets.

13 “(F) INFLATION ADJUSTMENT.—

14 “(i) IN GENERAL.—On the date that
15 is 5 years after the date of the enactment
16 of this paragraph, and every 5 years there-
17 after, each dollar amount in subparagraph
18 (E)(iii)(II) shall be adjusted by—

19 “(I) dividing the annual value of
20 the Employment Cost Index For
21 Wages and Salaries, Private Industry
22 Workers (or any successor index), as
23 published by the Bureau of Labor
24 Statistics, for the calendar year pre-
25 ceding the calendar year in which the

1 adjustment is being made by the an-
2 nual value of such index (or suc-
3 cessor) for the calendar year ending
4 December 31, 2020; and

5 “(II) multiplying such dollar
6 amount by the quotient obtained
7 under subclause (I).

8 “(ii) ROUNDING.—Each dollar
9 amount determined under clause (i) shall
10 be rounded to the nearest multiple of
11 \$100,000.”.

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

13 This Act and any amendment made by this Act shall
14 take effect on the date that is 90 days after the date of
15 the enactment of this Act.

Passed the House of Representatives May 11, 2022.

Attest: CHERYL L. JOHNSON,
Clerk.