

Union Calendar No. 233

117TH CONGRESS
2^D SESSION

H. R. 935

[Report No. 117-313]

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

FEBRUARY 8, 2021

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

MAY 10, 2022

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on February 8, 2021]

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 Mergers,*
5 *Acquisitions, Sales, and Brokerage Simplification Act of*
6 *2021”.*

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 this*
19 *paragraph if such broker does any of the fol-*
20 *lowing:*

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

1 or securities to be exchanged by the parties
2 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, period information,
9 documents, and reports under subsection
10 (d).

11 “(iii) Engages on behalf of any party
12 in a transaction involving a shell company,
13 other than a business combination related
14 shell company.

15 “(iv) Directly, or indirectly through
16 any of its affiliates, provides financing re-
17 lated to the transfer of ownership of an eli-
18 gible privately held company.

19 “(v) Assists any party to obtain fi-
20 nancing from an unaffiliated third party
21 without—

22 “(I) complying with all other ap-
23 plicable laws in connection with such
24 assistance, including, if applicable,

1 *Regulation T (12 C.F.R. 220 et seq.);*

2 *and*

3 *“(II) disclosing any compensation*
4 *in writing to the party.*

5 *“(vi) Represents both the buyer and the*
6 *seller in the same transaction without pro-*
7 *viding clear written disclosure as to the*
8 *parties the broker represents and obtaining*
9 *written consent from both parties to the*
10 *joint representation.*

11 *“(vii) Facilitates a transaction with a*
12 *group of buyers formed with the assistance*
13 *of the M&A broker to acquire the eligible*
14 *privately held company.*

15 *“(viii) Engages in a transaction in-*
16 *volving the transfer of ownership of an eli-*
17 *gible privately held company to a passive*
18 *buyer or group of passive buyers.*

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

22 *“(C) DISQUALIFICATION.—An M&A broker*
23 *is not exempt from registration under this para-*
24 *graph if such broker (and if and as applicable,*

1 including any officer, director, member, man-
2 ager, partner, or employee of such broker)—

3 “(i) has been barred from association
4 with a broker or dealer by the Commission,
5 any State, or any self-regulatory organiza-
6 tion; or

7 “(ii) is suspended from association
8 with a broker or dealer.

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

15 “(E) *DEFINITIONS.*—In this paragraph:

16 “(i) *BUSINESS COMBINATION RELATED*
17 *SHELL COMPANY.*—The term ‘business com-
18 bination related shell company’ means a
19 shell company that is formed by an entity
20 that is not a shell company—

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

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

8 “(ii) CONTROL.—The term ‘control’
9 means the power, directly or indirectly, to
10 direct the management or policies of a com-
11 pany, whether through ownership of securi-
12 ties, by contract, or otherwise. There is a
13 presumption of control if, upon completion
14 of a transaction, the buyer or group of buy-
15 ers—

16 “(I) has the right to vote 25 per-
17 cent or more of a class of voting securi-
18 ties or the power to sell or direct the
19 sale of 25 percent or more of a class of
20 voting securities; or

21 “(II) in the case of a partnership
22 or limited liability company, has the
23 right to receive upon dissolution, or
24 has contributed, 25 percent or more of
25 the capital.

1 “(iii) *ELIGIBLE PRIVATELY HELD COM-*
2 *PANY.—The term ‘eligible privately held*
3 *company’ means a privately held company*
4 *that meets both of the following conditions:*

5 “(I) *The company does not have*
6 *any class of securities registered, or re-*
7 *quired to be registered, with the Com-*
8 *mission under section 12 or with re-*
9 *spect to which the company files, or is*
10 *required to file, periodic information,*
11 *documents, and reports under sub-*
12 *section (d).*

13 “(II) *In the fiscal year ending im-*
14 *mediately before the fiscal year in*
15 *which the services of the M&A broker*
16 *are initially engaged with respect to*
17 *the securities transaction, the company*
18 *meets either or both of the following*
19 *conditions (determined in accordance*
20 *with the historical financial account-*
21 *ing records of the company):*

22 “(aa) *The earnings of the*
23 *company before interest, taxes, de-*
24 *preciation, and amortization are*
25 *less than \$25,000,000.*

1 “(bb) *The gross revenues of*
2 *the company are less than*
3 *\$250,000,000.*

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

10 “(iv) *M&A BROKER.—The term ‘M&A*
11 *broker’ means a broker, and any person as-*
12 *sociated with a broker, engaged in the busi-*
13 *ness of effecting securities transactions sole-*
14 *ly in connection with the transfer of owner-*
15 *ship of an eligible privately held company,*
16 *regardless of whether the broker acts on be-*
17 *half of a seller or buyer, through the pur-*
18 *chase, sale, exchange, issuance, repurchase,*
19 *or redemption of, or a business combination*
20 *involving, securities or assets of the eligible*
21 *privately held company, if the broker rea-*
22 *sonably believes that—*

23 “(I) *upon consummation of the*
24 *transaction, any person acquiring se-*
25 *curities or assets of the eligible pri-*

1 *vately held company, acting alone or*
2 *in concert—*

3 *“(aa) will control the eligible*
4 *privately held company or the*
5 *business conducted with the assets*
6 *of the eligible privately held com-*
7 *pany; and*

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

16 *“(AA) electing executive*
17 *officers;*

18 *“(BB) approving the*
19 *annual budget;*

20 *“(CC) serving as an ex-*
21 *ecutive or other executive*
22 *manager; or*

23 *“(DD) carrying out*
24 *such other activities as the*
25 *Commission may, by rule,*

1 *determine to be in the public*
2 *interest; and*

3 *“(II) if any person is offered secu-*
4 *rities in exchange for securities or as-*
5 *sets of the eligible privately held com-*
6 *pany, such person will, prior to becom-*
7 *ing legally bound to consummate the*
8 *transaction, receive or have reasonable*
9 *access to the most recent fiscal year-*
10 *end financial statements of the issuer*
11 *of the securities as customarily pre-*
12 *pared by the management of the issuer*
13 *in the normal course of operations and,*
14 *if the financial statements of the issuer*
15 *are audited, reviewed, or compiled, any*
16 *related statement by the independent*
17 *accountant, a balance sheet dated not*
18 *more than 120 days before the date of*
19 *the offer, and information pertaining*
20 *to the management, business, results of*
21 *operations for the period covered by the*
22 *foregoing financial statements, and*
23 *material loss contingencies of the*
24 *issuer.*

1 “(v) *SHELL COMPANY.*—*The term ‘shell*
2 *company’ means a company that at the*
3 *time of a transaction with an eligible pri-*
4 *vately held company—*

5 “(I) *has no or nominal oper-*
6 *ations; and*

7 “(II) *has—*

8 “(aa) *no or nominal assets;*

9 “(bb) *assets consisting solely*
10 *of cash and cash equivalents; or*

11 “(cc) *assets consisting of any*
12 *amount of cash and cash equiva-*
13 *lents and nominal other assets.*

14 “(F) *INFLATION ADJUSTMENT.*—

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

20 “(I) *dividing the annual value of*
21 *the Employment Cost Index For Wages*
22 *and Salaries, Private Industry Work-*
23 *ers (or any successor index), as pub-*
24 *lished by the Bureau of Labor Statis-*
25 *tics, for the calendar year preceding*

1 *the calendar year in which the adjust-*
2 *ment is being made by the annual*
3 *value of such index (or successor) for*
4 *the calendar year ending December 31,*
5 *2020; and*

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

9 *“(ii) ROUNDING.—Each dollar amount*
10 *determined under clause (i) shall be round-*
11 *ed to the nearest multiple of \$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 the*
15 *enactment of this Act.*

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