

By Senator Brandes

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1 A bill to be entitled
2 An act relating to mergers and acquisitions brokers;
3 amending s. 517.061, F.S.; providing an exemption from
4 specified registration requirements for a specified
5 offer or sale of securities; amending s. 517.12, F.S.;
6 defining terms; providing that a mergers and
7 acquisitions broker is exempt from registration with
8 the Office of Financial Regulation of the Financial
9 Services Commission; providing exceptions to the
10 exemption; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (22) is added to section 517.061,
15 Florida Statutes, to read:

16 517.061 Exempt transactions.—Except as otherwise provided
17 in s. 517.0611 for a transaction listed in subsection (21), the
18 exemption for each transaction listed below is self-executing
19 and does not require any filing with the office before claiming
20 the exemption. Any person who claims entitlement to any of the
21 exemptions bears the burden of proving such entitlement in any
22 proceeding brought under this chapter. The registration
23 provisions of s. 517.07 do not apply to any of the following
24 transactions; however, such transactions are subject to the
25 provisions of ss. 517.301, 517.311, and 517.312:

26 (22) The offer or sale of securities of an eligible
27 privately held company, as defined in s. 517.12(22)(a), through
28 a dealer registered under s. 517.12 or through a mergers and
29 acquisitions broker, as defined in s. 517.12(22)(a), if the

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30 mergers and acquisitions broker is exempt from registration as a
31 dealer under s. 517.12(22).

32 Section 2. Subsection (22) is added to section 517.12,
33 Florida Statutes, to read:

34 517.12 Registration of dealers, associated persons,
35 intermediaries, and investment advisers.—

36 (22) (a) As used in this subsection, the term:

37 1. "Control person" means an individual, a partnership, a
38 trust, or other organization that possesses the power, directly
39 or indirectly, to direct the management or policies of a company
40 through ownership of securities, by contract, or otherwise. A
41 person is presumed to control a company if, with respect to a
42 particular company, such person:

43 a. Is a director, a general partner, a member, or a manager
44 of a limited liability company, or is an officer who exercises
45 executive responsibility;

46 b. Has the power to vote at least 20 percent of a class of
47 voting securities or has the power to sell or direct the sale of
48 at least 20 percent of a class of voting securities; or

49 c. In the case of a partnership or limited liability
50 company, may receive upon dissolution, or has contributed, at
51 least 20 percent of the capital.

52 2. "Eligible privately held company" means a privately held
53 company that is a going concern and meets all of the following
54 conditions:

55 a. The company does not have any class of securities which
56 is registered, or which is required to be registered, with the
57 Securities and Exchange Commission under the Securities Exchange
58 Act of 1934, 15 U.S.C. s. 781, or for which the company files,

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59 or is required to file, summary and periodic information,
60 documents, and reports under the Securities Exchange Act of
61 1934, 15 U.S.C. s. 78o(d).

62 b. In the fiscal year immediately preceding the fiscal year
63 during which the mergers and acquisitions broker begins to
64 provide services for the securities transaction, the company, in
65 accordance with its historical financial accounting records, has
66 earnings before interest, taxes, depreciation, and amortization
67 of less than \$25 million or has gross revenues of less than \$250
68 million. On July 1, 2016, and every 5 years thereafter, each
69 dollar amount in this sub-subparagraph shall be adjusted by
70 dividing the annual value of the Employment Cost Index for wages
71 and salaries for private industry workers, or any successor
72 index, as published by the Bureau of Labor Statistics, for the
73 calendar year preceding the calendar year in which the
74 adjustment is being made, by the annual value of such index or
75 successor index for the calendar year ending December 31, 2012,
76 and multiplying such dollar amount by the quotient obtained.
77 Each dollar amount determined under this sub-subparagraph shall
78 be rounded to the nearest multiple of \$100,000.

79
80 The term includes a company in bankruptcy proceedings which
81 solicits, engages in research and development activities, or
82 carries out business transactions.

83 3. "Mergers and acquisitions broker" means a person that
84 acts, directly or indirectly, as a broker in carrying out
85 securities transactions solely in connection with the transfer
86 of ownership of eligible privately held companies. A mergers and
87 acquisitions broker may act on behalf of a seller or buyer

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88 through the purchase, sale, exchange, issuance, repurchase, or
89 redemption of securities or assets of the eligible privately
90 held company. The broker must reasonably believe that:

91 a. After the transaction is completed, any person who
92 acquires securities or assets of the eligible privately held
93 company, acting alone or in concert, will be the control person
94 of the eligible privately held company or will be the control
95 person for the business conducted with the assets of the
96 eligible privately held company; and

97 b. If any person is offered securities in exchange for
98 securities or assets of the eligible privately held company,
99 such person will, before becoming legally bound to complete the
100 transaction, receive or be given reasonable access to the most
101 recent year-end financial statements of the issuer of the
102 securities offered in exchange. The most recent year-end
103 financial statements shall be customarily prepared by the
104 issuer's management in the normal course of operations. If the
105 financial statements of the issuer are audited, reviewed, or
106 compiled, the most recent year-end financial statements must
107 include any related statement by the independent accountant; a
108 balance sheet dated not more than 120 days before the date of
109 the offer; and information pertaining to the management,
110 business, results of operations for the period covered by the
111 foregoing financial statements, and material loss contingencies
112 of the issuer.

113 4. "Public shell company" means a company, in concert with
114 an eligible privately held company and at the time of a
115 transaction, which:

116 a. Has any class of securities which is registered, or

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117 which is required to be registered, with the Securities and
118 Exchange Commission under the Securities Exchange Act of 1934,
119 15 U.S.C. s. 781, or for which the company files, or is required
120 to file, summary and periodic information, documents, and
121 reports under the Securities Exchange Act of 1934, 15 U.S.C. s.
122 78o(d);

123 b. Does not have any operations or has only nominal
124 operations; and

125 c. Does not have any assets; or has only nominal assets,
126 assets consisting only of cash, or assets consisting of cash
127 equivalents.

128 (b) A mergers and acquisitions broker is exempt from
129 registration under this section unless the mergers and
130 acquisitions broker:

131 1. Directly or indirectly, in connection with the transfer
132 of ownership of an eligible privately held company, receives,
133 holds, transmits, or has custody of the funds or securities to
134 be exchanged by the parties to the transaction;

135 2. Engages on behalf of an issuer in a public offering of
136 any class of securities which is registered, or which is
137 required to be registered, with the Securities and Exchange
138 Commission under the Securities Exchange Act of 1934, 15 U.S.C.
139 s. 781;

140 3. Engages on behalf of an issuer in a public offering of
141 any class of securities for which the issuer files, or is
142 required to file, summary and periodic information, documents,
143 and reports under the Securities Exchange Act of 1934, 15 U.S.C.
144 s. 78o(d);

145 4. Engages on behalf of any party in a transaction

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146 involving a public shell company;

147 5. Is subject to a suspension or revocation of registration
148 under the Securities Exchange Act of 1934, 15 U.S.C. s.

149 78o(b) (4);

150 6. Is subject to a statutory disqualification described in
151 the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a) (39);

152 7. Is subject to a disqualification under the rules adopted
153 by the Securities and Exchange Commission under s. 926 of the
154 Investor Protection and Securities Reform Act of 2010, Pub. L.
155 No. 111-203; or

156 8. Is subject to a final order described in the Securities
157 Exchange Act of 1934, 15 U.S.C. s. 78o(b) (4) (H) .

158 Section 3. This act shall take effect July 1, 2016.