

By the Committee on Banking and Insurance; and Senator Brandes

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1 A bill to be entitled
2 An act relating to merger and acquisition brokers;
3 amending s. 517.061, F.S.; providing an exemption from
4 certain registration requirements with the Office of
5 Financial Regulation for a specified offer or sale of
6 securities; amending s. 517.12, F.S.; defining terms;
7 requiring a merger and acquisition broker to receive
8 certain written assurances from a specified person
9 prior to the completion of specified securities
10 transactions; providing an exemption from certain
11 registration requirements with the office for a merger
12 and acquisition broker under certain circumstances;
13 specifying disqualifying conditions for the exemption;
14 providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Subsection (22) is added to section 517.061,
19 Florida Statutes, to read:

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

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30 (22) The offer or sale of securities, solely in connection
31 with the transfer of ownership of an eligible privately held
32 company, through a merger and acquisition broker in accordance
33 with s. 517.12(22).

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

36 517.12 Registration of dealers, associated persons,
37 intermediaries, and investment advisers.—

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

39 1. "Broker" has the same meaning as "dealer" as defined in
40 s. 517.021.

41 2. "Control person" means an individual or entity that
42 possesses the power, directly or indirectly, to direct the
43 management or policies of a company through ownership of
44 securities, by contract, or otherwise. A person is presumed to
45 be a control person of a company if, with respect to a
46 particular company, the person:

47 a. Is a director, a general partner, a member, or a manager
48 of a limited liability company, or is an officer who exercises
49 executive responsibility or has a similar status or function;

50 b. Has the power to vote 20 percent or more of a class of
51 voting securities or has the power to sell or direct the sale of
52 20 percent or more of a class of voting securities; or

53 c. In the case of a partnership or limited liability
54 company, may receive upon dissolution, or has contributed, 20
55 percent or more of the capital.

56 3. "Eligible privately held company" means a company that
57 meets all of the following conditions:

58 a. The company does not have any class of securities which

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59 is registered, or which is required to be registered, with the
60 United States Securities and Exchange Commission under the
61 Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or
62 with the office under s. 517.07, or for which the company files,
63 or is required to file, summary and periodic information,
64 documents, and reports under Section 15(d) of the Securities
65 Exchange Act of 1934, 15 U.S.C. s. 78o(d).

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

83 4. "Merger and acquisition broker" means any broker and any
84 person associated with a broker engaged in the business of
85 effecting securities transactions solely in connection with the
86 transfer of ownership of an eligible privately held company,
87 regardless of whether that broker acts on behalf of a seller or

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88 buyer, through the purchase, sale, exchange, issuance,
89 repurchase, or redemption of, or a business combination
90 involving, securities or assets of the eligible privately held
91 company.

92 5. "Public shell company" means a company that at the time
93 of a transaction with an eligible privately held company:

94 a. Has any class of securities which is registered, or
95 which is required to be registered, with the United States
96 Securities and Exchange Commission under the Securities Exchange
97 Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under
98 s. 517.07, or for which the company files, or is required to
99 file, summary and periodic information, documents, and reports
100 under Section 15(d) of the Securities Exchange Act of 1934, 15
101 U.S.C. s. 78o(d);

102 b. Has nominal or no operations; and

103 c. Has nominal assets or no assets, assets consisting
104 solely of cash and cash equivalents, or assets consisting of any
105 amount of cash and cash equivalents and nominal other assets.

106 (b) Prior to the completion of any securities transaction
107 described in s. 517.061(22), a merger and acquisition broker
108 must receive written assurances from the control person with the
109 largest percentage of ownership for both the buyer and seller
110 engaged in the transaction that:

111 a. After the transaction is completed, any person who
112 acquires securities or assets of the eligible privately held
113 company, acting alone or in concert, will be a control person of
114 the eligible privately held company or will be a control person
115 for the business conducted with the assets of the eligible
116 privately held company; and

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117 b. If any person is offered securities in exchange for
118 securities or assets of the eligible privately held company,
119 such person will, before becoming legally bound to complete the
120 transaction, receive or be given reasonable access to the most
121 recent year-end financial statements of the issuer of the
122 securities offered in exchange. The most recent year-end
123 financial statements shall be customarily prepared by the
124 issuer's management in the normal course of operations. If the
125 financial statements of the issuer are audited, reviewed, or
126 compiled, the most recent year-end financial statements must
127 include any related statement by the independent certified
128 public accountant; a balance sheet dated not more than 120 days
129 before the date of the exchange offer; and information
130 pertaining to the management, business, results of operations
131 for the period covered by the foregoing financial statements,
132 and material loss contingencies of the issuer.

133 (c) A merger and acquisition broker engaged in a
134 transaction exempt under s. 517.061(22) is exempt from
135 registration under this section unless the merger and
136 acquisition broker:

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

141 2. Engages on behalf of an issuer in a public offering of
142 any class of securities which is registered, or which is
143 required to be registered, with the United States Securities and
144 Exchange Commission under the Securities Exchange Act of 1934,
145 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;

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146 or for which the issuer files, or is required to file, periodic
147 information, documents, and reports under Section 15(d) of the
148 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

149 3. Engages on behalf of any party in a transaction
150 involving a public shell company;

151 4. Is subject to a suspension or revocation of registration
152 under Section 15(b) (4) of the Securities Exchange Act of 1934,
153 15 U.S.C. s. 78o(b) (4);

154 5. Is subject to a statutory disqualification described in
155 Section 3(a) (39) of the Securities Exchange Act of 1934, 15
156 U.S.C. s. 78c(a) (39);

157 6. Is subject to a disqualification under U.S. Securities
158 and Exchange Commission Rule 506(d), 17 C.F.R. s. 230.506(d); or

159 7. Is subject to a final order described in Section
160 15(b) (4) (H) of the Securities Exchange Act of 1934, 15 U.S.C. s.
161 78o(b) (4) (H).

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