

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 requirements for the registration with the
5 Office of Financial Regulation of a specified offer or
6 sale of securities; amending s. 517.12, F.S.;
7 providing definitions; requiring a merger and
8 acquisition broker to receive certain written
9 assurances from a specified person before completion
10 of specified securities transactions; providing an
11 exemption from certain requirements for the
12 registration with the office of a merger and
13 acquisition broker under certain circumstances;
14 specifying disqualifying conditions for the exemption;
15 providing an effective date.

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

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

21 517.061 Exempt transactions.—Except as otherwise provided
22 in s. 517.0611 for a transaction listed in subsection (21), the
23 exemption for each transaction listed below is self-executing
24 and does not require any filing with the office before claiming
25 the exemption. Any person who claims entitlement to any of the
26 exemptions bears the burden of proving such entitlement in any

27 proceeding brought under this chapter. The registration
 28 provisions of s. 517.07 do not apply to any of the following
 29 transactions; however, such transactions are subject to the
 30 provisions of ss. 517.301, 517.311, and 517.312:

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

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

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

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

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

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

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

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

53 20 percent or more of a class of voting securities; or
 54 c. In the case of a partnership or limited liability
 55 company, may receive upon dissolution, or has contributed, 20
 56 percent or more of the capital.
 57 3. "Eligible privately held company" means a company that
 58 meets all of the following conditions:
 59 a. The company does not have any class of securities which
 60 is registered, or which is required to be registered, with the
 61 United States Securities and Exchange Commission under the
 62 Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or
 63 with the office under s. 517.07, or for which the company files,
 64 or is required to file, summary and periodic information,
 65 documents, and reports under s. 15(d) of the Securities Exchange
 66 Act of 1934, 15 U.S.C. s. 78o(d).
 67 b. In the fiscal year immediately preceding the fiscal
 68 year during which the merger and acquisition broker begins to
 69 provide services for the securities transaction, the company, in
 70 accordance with its historical financial accounting records, had
 71 earnings before interest, taxes, depreciation, and amortization
 72 of less than \$25 million or had gross revenues of less than \$250
 73 million. On July 1, 2021, and every 5 years thereafter, each
 74 dollar amount in this sub-subparagraph shall be adjusted by
 75 dividing the annual value of the Employment Cost Index for wages
 76 and salaries for private industry workers, or any successor
 77 index, as published by the Bureau of Labor Statistics, for the
 78 calendar year preceding the calendar year in which the

79 adjustment is being made, by the annual value of such index or
80 successor index for the calendar year ending December 31, 2012,
81 and multiplying such dollar amount by the quotient obtained.
82 Each dollar amount determined under this sub-subparagraph shall
83 be rounded to the nearest multiple of \$100,000.

84 4. "Merger and acquisition broker" means any broker and
85 any person associated with a broker engaged in the business of
86 effecting securities transactions solely in connection with the
87 transfer of ownership of an eligible privately held company,
88 regardless of whether that broker acts on behalf of a seller or
89 buyer, through the purchase, sale, exchange, issuance,
90 repurchase, or redemption of, or a business combination
91 involving, securities or assets of the eligible privately held
92 company.

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

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

103 b. Has nominal or no operations; and

104 c. Has nominal assets or no assets, assets consisting

105 solely of cash and cash equivalents, or assets consisting of any
106 amount of cash and cash equivalents and nominal other assets.

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

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

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

131 pertaining to the management, business, and results of
132 operations for the period covered by the foregoing financial
133 statements, and material loss contingencies of the issuer.

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

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

142 2. Engages on behalf of an issuer in a public offering of
143 any class of securities which is registered, or which is
144 required to be registered, with the United States Securities and
145 Exchange Commission under the Securities Exchange Act of 1934,
146 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;
147 or for which the issuer files, or is required to file, periodic
148 information, documents, and reports under s. 15(d) of the
149 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

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

152 4. Is subject to a suspension or revocation of
153 registration under s. 15(b)(4) of the Securities Exchange Act of
154 1934, 15 U.S.C. s. 78o(b)(4);

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

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157 78c(a)(39);

158 6. Is subject to a disqualification under United States
159 Securities and Exchange Commission Rule 506(d), 17 C.F.R. s.
160 230.506(d); or

161 7. Is subject to a final order described in s. 15(b)(4)(H)
162 of the Securities Exchange Act of 1934, 15 U.S.C. s.
163 78o(b)(4)(H).

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