

115TH CONGRESS
2D SESSION

H. R. 6127

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2018

Mr. BUDD introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to create a safe harbor for finders and private placement brokers, and for other purposes.

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 “Unlocking Capital for
5 Small Businesses Act of 2018”.

6 **SEC. 2. SAFE HARBORS FOR PRIVATE PLACEMENT BRO-**
7 **KERS AND FINDERS.**

8 (a) IN GENERAL.—Section 15 of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78o) is amended by adding
10 at the end the following:

1 “(p) PRIVATE PLACEMENT BROKER SAFE HAR-
2 BOR.—

3 “(1) REGISTRATION REQUIREMENTS.—Not
4 later than 180 days after the date of the enactment
5 of this subsection the Commission shall promulgate
6 regulations with respect to private placement brokers
7 that are no more stringent than those imposed on
8 funding portals, as defined in section 304 of the
9 Jumpstart Our Business Startups Act of 2012.

10 “(2) NATIONAL SECURITIES ASSOCIATIONS.—
11 Not later than 180 days after the date of the enact-
12 ment of this subsection the Commission shall pro-
13 mulgate regulations that require the rules of any na-
14 tional securities association to allow a private place-
15 ment broker to become a member of such national
16 securities association subject to reduced membership
17 requirements consistent with this subsection.

18 “(3) DISCLOSURES REQUIRED.—Before effect-
19 ing a transaction, a private placement broker shall
20 disclose clearly and conspicuously, in writing, to all
21 parties to the transaction as a result of the broker’s
22 activities—

23 “(A) that the broker is acting as a private
24 placement broker;

1 “(B) the amount of any payment or antici-
2 pated payment for services rendered as a pri-
3 vate placement broker in connection with such
4 transaction;

5 “(C) the person to whom any such pay-
6 ment is made;

7 “(D) any beneficial interest in the issuer,
8 direct or indirect, of the private placement
9 broker, of a member of the immediate family of
10 the private placement broker, of an associated
11 person of the private placement broker, or of a
12 member of the immediate family of such associ-
13 ated person.

14 “(4) PRIVATE PLACEMENT BROKER DE-
15 FINED.—In this subsection, the term ‘private place-
16 ment broker’ means a person that—

17 “(A) receives transaction-based compensa-
18 tion—

19 “(i) for effecting a transaction by—

20 “(I) introducing an issuer of se-
21 curities and a buyer of such securities
22 in connection with the sale of a busi-
23 ness effected as the sale of securities;

24 or

1 “(II) introducing an issuer of se-
2 curities and a buyer of such securities
3 in connection with the placement of
4 securities in transactions that are ex-
5 empt from registration requirements
6 under the Securities Act of 1933; and
7 “(ii) that is not with respect to—

8 “(I) a class of publicly traded se-
9 curities;

10 “(II) the securities of an invest-
11 ment company (as defined in section 3
12 of the Investment Company Act of
13 1940); or

14 “(III) a variable or equity-in-
15 dexed annuity or other variable or eq-
16 uity-indexed life insurance product;

17 “(B) with respect to a transaction for
18 which such transaction-based compensation is
19 received—

20 “(i) does not handle or take posses-
21 sion of the funds or securities; and

22 “(ii) does not engage in an activity
23 that requires registration as an investment
24 adviser under State or Federal law; and

1 “(C) is not a finder as defined under sub-
2 section (q).

3 “(q) FINDER SAFE HARBOR.—

4 “(1) NONREGISTRATION.—A finder is exempt
5 from the registration requirements of this Act.

6 “(2) NATIONAL SECURITIES ASSOCIATIONS.—A
7 finder shall not be required to become a member of
8 any national securities association.

9 “(3) FINDER DEFINED.—In this subsection, the
10 term ‘finder’ means a person described in para-
11 graphs (A) and (B) of subsection (p)(4) that—

12 “(A) receives transaction-based compensa-
13 tion of equal to or less than \$500,000 in any
14 calendar year;

15 “(B) receives transaction-based compensa-
16 tion in connection with transactions that result
17 in a single issuer selling securities valued at
18 equal to or less than \$15 million in any cal-
19 endar year;

20 “(C) receives transaction-based compensa-
21 tion in connection with transactions that result
22 in any combination of issuers selling securities
23 valued at equal to or less than \$30 million in
24 any calendar year; or

1 “(D) receives transaction-based compensa-
2 tion in connection with fewer than 16 trans-
3 actions that are not part of the same offering
4 or are otherwise unrelated in any calendar
5 year.”.

6 (b) VALIDITY OF CONTRACTS WITH REGISTERED
7 PRIVATE PLACEMENT BROKERS AND FINDERS.—Section
8 29 of the Securities Exchange Act (15 U.S.C. 78cc) is
9 amended by adding at the end the following:

10 “(d) Subsection (b) shall not apply to a contract
11 made for a transaction if—

12 “(1) the transaction is one in which the issuer
13 engaged the services of a broker or dealer that is not
14 registered under this Act with respect to such trans-
15 action;

16 “(2) such issuer received a self-certification
17 from such broker or dealer certifying that such
18 broker or dealer is a registered private placement
19 broker under section 15(p) or a finder under section
20 15(q); and

21 “(3) the issuer either did not know that such
22 self-certification was false or did not have a reason-
23 able basis to believe that such self-certification was
24 false.”.

1 (c) REMOVAL OF PRIVATE PLACEMENT BROKERS
2 FROM DEFINITIONS OF BROKER.—

3 (1) RECORDS AND REPORTS ON MONETARY IN-
4 STRUMENTS TRANSACTIONS.—Section 5312 of title
5 31, United States Code, is amended in subsection
6 (a)(2)(G) by inserting “with the exception of a pri-
7 vate placement broker as defined in section 15(p)(4)
8 of the Securities Exchange Act of 1934 (15 U.S.C.
9 78o(p)(4))” before the semicolon at the end.

10 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
11 tion 3(a)(4) of the Securities Exchange Act of 1934
12 (15 U.S.C. 78c(a)(4)) is amended by adding at the
13 end the following:

14 “(G) PRIVATE PLACEMENT BROKERS.—A
15 private placement broker as defined in section
16 15(p)(4) is not a broker for the purposes of this
17 Act.”.

18 **SEC. 3. LIMITATIONS ON STATE LAW.**

19 Section 15(i) of the Securities Exchange Act of 1934
20 (15 U.S.C. 78o(i)) is amended—

21 (1) by redesignating paragraph (3) as para-
22 graph (4); and

23 (2) by inserting after paragraph (2) the fol-
24 lowing:

1 “(3) PRIVATE PLACEMENT BROKERS AND FIND-
2 ERS.—

3 “(A) IN GENERAL.—No State or political
4 subdivision thereof may enforce any law, rule,
5 regulation, or other administrative action that
6 imposes greater registration, audit, financial
7 recordkeeping, or reporting requirements on a
8 private placement broker or finder than those
9 that are required under subsections (p) and (q),
10 respectively.

11 “(B) DEFINITION OF STATE.—For pur-
12 poses of this paragraph, the term ‘State’ in-
13 cludes the District of Columbia and each terri-
14 tory of the United States.”.

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