

117TH CONGRESS  
2D SESSION

# S. 3922

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

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IN THE SENATE OF THE UNITED STATES

MARCH 24, 2022

Mr. CRAMER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## 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 2022”.

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 270 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. Not later than 270 days after the  
9 publication of the proposed regulations in the Fed-  
10 eral Register, the Commission shall promulgate final  
11 rules.

12           “(2) NATIONAL SECURITIES ASSOCIATIONS.—  
13 Not later than 270 days after the date of the enact-  
14 ment of this subsection the Commission shall pro-  
15 mulgate regulations that require the rules of any na-  
16 tional securities association to allow a private place-  
17 ment broker to become a member of such national  
18 securities association subject to reduced membership  
19 requirements consistent with this subsection. Not  
20 later than 270 days after the publication of the pro-  
21 posed regulations in the Federal Register, the Com-  
22 mission shall promulgate final rules.

23           “(3) DISCLOSURES REQUIRED.—Before the  
24 consummation of a transaction effecting a private  
25 placement, a private placement broker shall disclose

1 clearly and conspicuously, in writing, to all parties  
2 to the transaction as a result of the broker's activi-  
3 ties—

4 “(A) that the broker is acting as a private  
5 placement broker;

6 “(B) the amount of any compensation or  
7 anticipated compensation for services rendered  
8 as a private placement broker in connection  
9 with such transaction;

10 “(C) the person to whom any such com-  
11 pensation is made; and

12 “(D) any beneficial interest in the issuer,  
13 direct or indirect, of the private placement  
14 broker, of a member of the immediate family of  
15 the private placement broker, of an associated  
16 person of the private placement broker, or of a  
17 member of the immediate family of such associ-  
18 ated person.

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

22 “(A) receives transaction-based compensa-  
23 tion—

24 “(i) for effecting a transaction by—

1           “(I) introducing an issuer of se-  
2           curities and a buyer of such securities  
3           in connection with the sale of a busi-  
4           ness effected as the sale of securities;  
5           or

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

13                 “(I) a class of publicly traded se-  
14                 curities;

15                 “(II) the securities of an invest-  
16                 ment company (as defined in section 3  
17                 of the Investment Company Act of  
18                 1940); or

19                 “(III) a variable or equity-in-  
20                 dexed annuity or other variable or eq-  
21                 uity-indexed life insurance product;

22                 “(B) with respect to a transaction for  
23                 which such transaction-based compensation is  
24                 received—

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

3 “(ii) does not engage in an activity  
4 that requires registration as an investment  
5 adviser under State or Federal law; and

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

8 “(q) FINDER SAFE HARBOR.—

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

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

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

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

20 “(B) receives transaction-based compensa-  
21 tion in connection with transactions that result  
22 in a single issuer selling securities valued at  
23 equal to or less than \$15,000,000 in any cal-  
24 endar year;

1           “(C) receives transaction-based compensa-  
2           tion in connection with transactions that result  
3           in any combination of issuers selling securities  
4           valued at equal to or less than \$30,000,000 in  
5           any calendar year; or

6           “(D) receives transaction-based compensa-  
7           tion in connection with fewer than 16 trans-  
8           actions that are not part of the same offering  
9           or are otherwise unrelated in any calendar year.

10          “(4) ADJUSTMENT FOR INFLATION.—The  
11          amounts described in paragraph (3) shall be in-  
12          creased each year by an amount equal to the per-  
13          centage increase, if any, in the Consumer Price  
14          Index, as determined by the Department of Labor or  
15          its successor.”.

16          (b) VALIDITY OF CONTRACTS WITH REGISTERED  
17          PRIVATE PLACEMENT BROKERS AND FINDERS.—Section  
18          29 of the Securities Exchange Act (15 U.S.C. 78ee) is  
19          amended by adding at the end the following:

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

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

1           “(2) such issuer received a self-certification  
2           from such broker or dealer certifying that such  
3           broker or dealer is a registered private placement  
4           broker under section 15(p) or a finder under section  
5           15(q); and

6           “(3) the issuer either did not know that such  
7           self-certification was false or did not have a reason-  
8           able basis to believe that such self-certification was  
9           false.”.

10           (c) REMOVAL OF PRIVATE PLACEMENT BROKERS  
11 FROM DEFINITIONS OF BROKER.—

12           (1) RECORDS AND REPORTS ON MONETARY IN-  
13           STRUMENTS TRANSACTIONS.—Section 5312 of title  
14           31, United States Code, is amended in subsection  
15           (a)(2)(G) by inserting “with the exception of a pri-  
16           vate placement broker as defined in section 15(p)(4)  
17           of the Securities Exchange Act of 1934 (15 U.S.C.  
18           78o(p)(4))” before the semicolon at the end.

19           (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
20           tion 3(a)(4) of the Securities Exchange Act of 1934  
21           (15 U.S.C. 78c(a)(4)) is amended by adding at the  
22           end the following:

23           “(G) PRIVATE PLACEMENT BROKERS.—A  
24           private placement broker as defined in section

1           15(p)(4) is not a broker for the purposes of this  
2           Act.”.

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

4           Section 15(i) of the Securities Exchange Act of 1934  
5 (15 U.S.C. 78o(i)) is amended—

6           (1) by redesignating paragraph (3) as para-  
7           graph (4); and

8           (2) by inserting after paragraph (2) the fol-  
9           lowing:

10           “(3) PRIVATE PLACEMENT BROKERS AND FIND-  
11           ERS.—

12           “(A) IN GENERAL.—No State or political  
13           subdivision thereof may enforce any law, rule,  
14           regulation, or other administrative action that  
15           imposes greater registration, audit, financial  
16           recordkeeping, or reporting requirements on a  
17           private placement broker or finder than those  
18           that are required under subsections (p) and (q),  
19           respectively.

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

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