

**TITLE V—SMALL BUSINESS MERGERS, ACQUISITIONS, SALES,
AND BROKERAGE SIMPLIFICATION**

SEC. 501. REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

(13) REGISTRATION EXEMPTION FOR MERGER AND ACQUISITION BROKERS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an M&A broker shall be exempt from registration under this section.

(B) EXCLUDED ACTIVITIES.—An M&A broker is not exempt from registration under this paragraph if such broker does any of the following:

(i) Directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, **holds, transmits, or has custody of the funds or securities to be exchanged by the parties** to the transaction.

(ii) **Engages on behalf of an issuer** in **a public offering** of any class of securities that is registered, or is required to be registered, with the Commission under section 12 or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under subsection (d).

(iii) Engages on behalf of any party in **a transaction involving a SHELL COMPANY, other than a BUSINESS COMBINATION RELATED SHELL COMPANY.**

(iv) Directly, or indirectly through any of its affiliates, **provides financing related to the transfer of ownership** of an **ELIGIBLE PRIVATELY HELD COMPANY.**

(v) **Assists any party to obtain financing** from **an unaffiliated third party without—**

(I) **complying with all other applicable laws** in connection with **such assistance**, including, if applicable, **Regulation T** (12 C.F.R. 220 et seq.) [**Credit by Brokers and Dealers**]; and

(II) **disclosing any compensation in writing to the party.**

(vi) **Represents both the buyer and the seller in the same transaction** without providing clear **written disclosure** as to the parties the broker represents **and obtaining written consent from both parties** to the joint representation.

(vii) **Facilitates a transaction with a group of buyers formed with the assistance of the M&A broker** to acquire the eligible privately held company.

(viii) Engages in a transaction involving the **transfer of ownership** of an eligible privately held company **to a passive buyer or group of passive buyers.**

(ix) Binds a party to a transfer of ownership of an eligible privately held company.

(C) DISQUALIFICATION.—An M&A broker is not exempt from registration under this paragraph if such broker (and if and as applicable, including any officer, director, member, manager, partner, or employee of such broker)—

(i) has been barred from association with a broker or dealer by the Commission, any State, or any self-regulatory organization; or

(ii) is suspended from association with a broker or dealer.

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit any other authority of the Commission to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.

(E) **DEFINITIONS.**—In this paragraph:

(i) **BUSINESS COMBINATION RELATED SHELL COMPANY.**—The term ‘business combination related shell company’ means a shell company that is formed by an entity that is **not a SHELL COMPANY** [e.g., not a SPAC]—

(I) solely for the purpose of **changing the corporate domicile** of that entity solely within the United States; or

(II) **solely for the purpose of completing a business combination transaction** (as defined under section 230.165(f) of title 17, Code of Federal Regulations) [*forward/reverse triangular mergers*] among one or more entities other than the company itself, none of which is a shell company.

(ii) **CONTROL.**—The term ‘control’ means the **power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.** There is a **presumption of control** if, upon completion of a transaction, the buyer or group of buyers—

(I) **has the right to vote 25 percent or more of a class of voting securities** or the **power to sell or direct the sale of 25 percent or more of a class of voting securities;** or

(II) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

(iii) **ELIGIBLE PRIVATELY HELD COMPANY**.—The term ‘eligible privately held company’ means a **privately held company** that meets **both of the following conditions**:

(I) The company **does not have any class of securities registered, or required to be registered**, with the Commission under section 12 or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d).

(II) In the fiscal year ending immediately before the fiscal year in which the services of the M&A broker are initially engaged with respect to the securities transaction, **the company meets either or both** of the following conditions¹ (determined in accordance with the **historical financial accounting records of the company**):

(aa) The **[EBITDA]** earnings of the company before interest, taxes, depreciation, and amortization are **less than \$25,000,000**.

(bb) The **gross revenues** of the company are **less than \$250,000,000**.

For purposes of this subclause, the **Commission may by rule modify the dollar figures** if the Commission determines that such a modification is necessary or appropriate in the public interest or for the protection of investors.

¹ **Note: The 2014 SEC staff M&A Brokers No-Action Letter had no size caps—it’s inclusion was purely a political consideration.**

(iv) **M&A BROKER.**—The term ‘M&A broker’ means a **BROKER**,² and **any person associated with a broker**, engaged in the business of effecting securities transactions **solely in connection with the transfer of ownership** of an **eligible privately held company**, regardless of whether the broker acts on behalf of a **seller or buyer**, through the **purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination** involving, **securities or assets** of the eligible privately held company, if the **broker reasonably believes** that—

(I) upon consummation of the transaction, **any person acquiring securities or assets of the eligible privately held company, acting alone or in concert**—

(aa) **will CONTROL the eligible privately held company** or the business conducted with the assets of the eligible privately held company; **and**

(bb) **directly or indirectly, will be active in the management** of the eligible privately held company or the business conducted with the assets of the eligible privately held company, **including without limitation, for example**, by—

(AA) **electing executive officers**;

(BB) **approving the annual budget**;

(CC) **servicing as an executive or other executive manager**; or

(DD) carrying out such other activities as the Commission may, by rule, determine to be in the public interest; and

(II) if **any person is offered securities in exchange for securities or assets of the eligible privately held company** [e.g., *seller rollover equity in buyer*], such person will, prior to becoming legally bound to consummate the transaction, **receive or have reasonable access** to the [1] most recent **fiscal year-end financial statements of the issuer** of the securities as customarily prepared by the management of the issuer in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant, [2] a **balance sheet dated not more than 120 days before the date of the offer**, and [3] information pertaining to the **management, business, results of operations for the period covered** by the foregoing financial statements, and [4] **material loss contingencies** of the issuer.

(v) **SHELL COMPANY.**—The term ‘shell company’ means a company that at the time of a transaction with an eligible privately held company—[e.g., *a SPAC*]

(I) has no or nominal operations; and

(II) has—

(aa) no or nominal assets;

(bb) assets consisting solely of cash and cash equivalents; or

(cc) assets consisting of any amount of cash and cash equivalents and nominal other assets.

² **“BROKER” is defined in and for purposes of the 1934 Act: “any person engaged in the business of effecting transactions in securities for the account of others”.**

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—On the date that is 5 years after the date of the enactment of this paragraph, and every 5 years thereafter, each dollar amount in subparagraph (E)(iii)(II) shall be adjusted by—

(I) dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2020; and

(II) multiplying such dollar amount by the quotient obtained under subclause (I).

(ii) ROUNDING.—Each dollar amount determined under clause (i) shall be rounded to the nearest multiple of \$100,000.

(b) EFFECTIVE DATE.—This section and any amendment made by this section shall take effect on the date that is 90 days after the date of enactment [December 29, 2022] of this Act [March 29, 2023].