

2016286er

1  
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.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
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:

2016286er

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

2016286er

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, 2021, 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

2016286er

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 1. 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

2016286er

117       2. 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;

2016286er

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 the United States  
158 Securities and Exchange Commission Rule 506(d), 17 C.F.R. s.  
159 230.506(d); or

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

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