

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
 ADOPTED AS AMENDED _____ (Y/N)
 ADOPTED W/O OBJECTION _____ (Y/N)
 FAILED TO ADOPT _____ (Y/N)
 WITHDRAWN _____ (Y/N)
 OTHER

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee
 3 Representative Raulerson offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

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

9 517.061 Exempt transactions.—Except as otherwise provided
 10 in s. 517.0611 for a transaction listed in subsection (21), the
 11 exemption for each transaction listed below is self-executing
 12 and does not require any filing with the office before claiming
 13 the exemption. Any person who claims entitlement to any of the
 14 exemptions bears the burden of proving such entitlement in any
 15 proceeding brought under this chapter. The registration
 16 provisions of s. 517.07 do not apply to any of the following

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17 transactions; however, such transactions are subject to the
18 provisions of ss. 517.301, 517.311, and 517.312:

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

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

25 517.12 Registration of dealers, associated persons,
26 intermediaries, and investment advisers.—

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

28 1. "Broker" has the same meaning as "dealer" as defined in
29 s. 517.021.

30 2. "Control person" means an individual or entity that
31 possesses the power, directly or indirectly, to direct the
32 management or policies of a company through ownership of
33 securities, by contract, or otherwise. A person is presumed to
34 be a control person of a company if, with respect to a
35 particular company, the person:

36 a. Is a director, a general partner, a member, or a
37 manager of a limited liability company, or is an officer who
38 exercises executive responsibility or has a similar status or
39 function;

40 b. Has the power to vote 20 percent or more of a class of
41 voting securities or has the power to sell or direct the sale of
42 20 percent or more of a class of voting securities; or

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43 c. In the case of a partnership or limited liability
44 company, may receive upon dissolution, or has contributed, 20
45 percent or more of the capital.

46 3. "Eligible privately held company" means a company that
47 meets all of the following conditions:

48 a. The company does not have any class of securities which
49 is registered, or which is required to be registered, with the
50 United States Securities and Exchange Commission under the
51 Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or
52 with the office under s. 517.07, or for which the company files,
53 or is required to file, summary and periodic information,
54 documents, and reports under s. 15(d) of the Securities Exchange
55 Act of 1934, 15 U.S.C. s. 78o(d).

56 b. In the fiscal year immediately preceding the fiscal
57 year during which the merger and acquisition broker begins to
58 provide services for the securities transaction, the company, in
59 accordance with its historical financial accounting records, has
60 earnings before interest, taxes, depreciation, and amortization
61 of less than \$25 million or has gross revenues of less than \$250
62 million. On July 1, 2016, and every 5 years thereafter, each
63 dollar amount in this sub-subparagraph shall be adjusted by
64 dividing the annual value of the Employment Cost Index for wages
65 and salaries for private industry workers, or any successor
66 index, as published by the Bureau of Labor Statistics, for the
67 calendar year preceding the calendar year in which the
68 adjustment is being made, by the annual value of such index or

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69 successor index for the calendar year ending December 31, 2012,
70 and multiplying such dollar amount by the quotient obtained.
71 Each dollar amount determined under this sub-subparagraph shall
72 be rounded to the nearest multiple of \$100,000.

73 4. "Merger and acquisition broker" means any broker and
74 any person associated with a broker engaged in the business of
75 effecting securities transactions solely in connection with the
76 transfer of ownership of an eligible privately held company,
77 regardless of whether that broker acts on behalf of a seller or
78 buyer, through the purchase, sale, exchange, issuance,
79 repurchase, or redemption of, or a business combination
80 involving, securities or assets of the eligible privately held
81 company.

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

84 a. Has any class of securities which is registered, or
85 which is required to be registered, with the United States
86 Securities and Exchange Commission under the Securities Exchange
87 Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under
88 s. 517.07, or for which the company files, or is required to
89 file, summary and periodic information, documents, and reports
90 under s. 15(d) of the Securities Exchange Act of 1934, 15 U.S.C.
91 s. 78o(d);

92 b. Has nominal or no operations; and

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93 c. Has nominal assets or no assets, assets consisting
94 solely of cash and cash equivalents, or assets consisting of any
95 amount of cash and cash equivalents and nominal other assets.

96 (b) Prior to the completion of any securities transaction
97 described in s. 517.061(22), a merger and acquisition broker
98 must receive written assurances from the control person with the
99 largest percentage of ownership for both the buyer and seller
100 engaged in the transaction that:

101 1. After the transaction is completed, any person who
102 acquires securities or assets of the eligible privately held
103 company, acting alone or in concert, will be a control person of
104 the eligible privately held company or will be a control person
105 for the business conducted with the assets of the eligible
106 privately held company; and

107 2. If any person is offered securities in exchange for
108 securities or assets of the eligible privately held company,
109 such person will, before becoming legally bound to complete the
110 transaction, receive or be given reasonable access to the most
111 recent year-end financial statements of the issuer of the
112 securities offered in exchange. The most recent year-end
113 financial statements shall be customarily prepared by the
114 issuer's management in the normal course of operations. If the
115 financial statements of the issuer are audited, reviewed, or
116 compiled, the most recent year-end financial statements must
117 include any related statement by the independent certified
118 public accountant; a balance sheet dated not more than 120 days

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119 before the date of the exchange offer; and information
120 pertaining to the management, business, and results of
121 operations for the period covered by the foregoing financial
122 statements, and material loss contingencies of the issuer.

123 (c) A merger and acquisition broker engaged in a
124 transaction exempt under s. 517.061(22) is exempt from
125 registration under this section unless the merger and
126 acquisition broker:

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

131 2. Engages on behalf of an issuer in a public offering of
132 any class of securities which is registered, or which is
133 required to be registered, with the United States Securities and
134 Exchange Commission under the Securities Exchange Act of 1934,
135 15 U.S.C. ss. 78a et seq., or with the office under s. 517.07;
136 or for which the issuer files, or is required to file, periodic
137 information, documents, and reports under s. 15(d) of the
138 Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

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

141 4. Is subject to a suspension or revocation of
142 registration under s. 15(b)(4) of the Securities Exchange Act of
143 1934, 15 U.S.C. s. 78o(b)(4);

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144 5. Is subject to a statutory disqualification described in
145 s. 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. s.
146 78c(a)(39);

147 6. Is subject to a disqualification under United States
148 Securities and Exchange Commission Rule 506(d), 17 C.F.R. s.
149 230.506(d); or

150 7. Is subject to a final order described in s. 15(b)(4)(H)
151 of the Securities Exchange Act of 1934, 15 U.S.C. s.
152 78o(b)(4)(H).

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

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156 **T I T L E A M E N D M E N T**

157 Remove everything before the enacting clause and insert:

158 A bill to be entitled

159 An act relating to merger and acquisition brokers;
160 amending s. 517.061, F.S.; providing an exemption from
161 certain registration requirements with the Office of
162 Financial Regulation for a specified offer or sale of
163 securities; amending s. 517.12, F.S.; providing
164 definitions; requiring a merger and acquisition broker
165 to receive certain written assurances from a specified
166 person before completion of specified securities
167 transactions; providing an exemption from certain
168 registration requirements with the office for a merger
169 and acquisition broker under certain circumstances;

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170 specifying disqualifying conditions for the exemption;
171 providing an effective date.