

**[DISCUSSION DRAFT]**

118<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R.** \_\_\_\_\_

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 HOUSE OF REPRESENTATIVES

M. \_\_\_\_\_ introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

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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 2023”.

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

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

6 “(p) PRIVATE PLACEMENT BROKER SAFE HAR-  
7 BOR.—

8 “(1) REGISTRATION REQUIREMENTS.—Not  
9 later than 180 days after the date of the enactment  
10 of this subsection the Commission shall promulgate  
11 regulations with respect to private placement brokers  
12 that are no more stringent than those imposed on  
13 funding portals.

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

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

1           “(A) that the broker is acting as a private  
2 placement broker;

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

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

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

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

19           “(A) receives transaction-based compensa-  
20 tion—

21           “(i) for effecting a transaction by—

22           “(I) introducing an issuer of se-  
23 curities and a buyer of such securities  
24 in connection with the sale of a busi-

1                   ness effected as the sale of securities;  
2                   or

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

10                   “(I) a class of publicly traded se-  
11                   curities;

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

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

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

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

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

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

6                   “(q) FINDER SAFE HARBOR.—

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

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

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

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

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

23                         “(C) receives transaction-based compensa-  
24                         tion in connection with transactions that result  
25                         in any combination of issuers selling securities

1           valued at equal to or less than \$30 million in  
2           any calendar year; or

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

8           (b) VALIDITY OF CONTRACTS WITH REGISTERED  
9 PRIVATE PLACEMENT BROKERS AND FINDERS.—Section  
10 29 of the Securities Exchange Act (15 U.S.C. 78cc) is  
11 amended by adding at the end the following:

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

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

18           “(2) such issuer received a self-certification  
19           from such broker or dealer certifying that such  
20           broker or dealer is a registered private placement  
21           broker under section 15(p) or a finder under section  
22           15(q); and

23           “(3) the issuer either did not know that such  
24           self-certification was false or did not have a reason-

1       able basis to believe that such self-certification was  
2       false.”.

3       (c) REMOVAL OF PRIVATE PLACEMENT BROKERS  
4 FROM DEFINITIONS OF BROKER.—

5           (1) RECORDS AND REPORTS ON MONETARY IN-  
6 STRUMENTS TRANSACTIONS.—Section 5312 of title  
7 31, United States Code, is amended in subsection  
8 (a)(2)(G) by inserting “with the exception of a pri-  
9 vate placement broker as defined in section 15(p)(4)  
10 of the Securities Exchange Act of 1934 (15 U.S.C.  
11 78o(p)(4))” before the semicolon at the end.

12           (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
13 tion 3(a)(4) of the Securities Exchange Act of 1934  
14 (15 U.S.C. 78c(a)(4)) is amended by adding at the  
15 end the following:

16           “(G) PRIVATE PLACEMENT BROKERS.—A  
17 private placement broker as defined in section  
18 15(p)(4) is not a broker for the purposes of this  
19 Act.”.

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

21       Section 15(i) of the Securities Exchange Act of 1934  
22 (15 U.S.C. 78o(i)) is amended—

23           (1) by redesignating paragraphs (3) and (4) as  
24 paragraphs (4) and (5), respectively;

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

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

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

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

17                  (3) in paragraph (4), as so redesignated, by  
18                  striking “paragraph (3)” and inserting “paragraph  
19                  (5)”.