

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 935
OFFERED BY MR. HUIZENGA OF MICHIGAN**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Merg-
3 ers, Acquisitions, Sales, and Brokerage Simplification Act
4 of 2021”.

5 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**
6 **QUISITION BROKERS.**

7 Section 15(b) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(b)) is amended by adding at the end the
9 following:

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

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an M&A broker shall be ex-
14 empt from registration under this section.

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

1 “(i) Directly or indirectly, in connec-
2 tion with the transfer of ownership of an
3 eligible privately held company, receives,
4 holds, transmits, or has custody of the
5 funds or securities to be exchanged by the
6 parties to the transaction.

7 “(ii) Engages on behalf of an issuer in
8 a public offering of any class of securities
9 that is registered, or is required to be reg-
10 istered, with the Commission under section
11 12 or with respect to which the issuer files,
12 or is required to file, period information,
13 documents, and reports under subsection
14 (d).

15 “(iii) Engages on behalf of any party
16 in a transaction involving a shell company,
17 other than a business combination related
18 shell company.

19 “(iv) Directly, or indirectly through
20 any of its affiliates, provides financing re-
21 lated to the transfer of ownership of an eli-
22 gible privately held company.

23 “(v) Assists any party to obtain fi-
24 nancing from an unaffiliated third party
25 without—

1 “(I) complying with all other ap-
2 plicable laws in connection with such
3 assistance, including, if applicable,
4 Regulation T (12 C.F.R. 220 et seq.);
5 and

6 “(II) disclosing any compensation
7 in writing to the party.

8 “(vi) Represents both the buyer and
9 the seller in the same transaction without
10 providing clear written disclosure as to the
11 parties the broker represents and obtaining
12 written consent from both parties to the
13 joint representation.

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

18 “(viii) Engages in a transaction in-
19 volving the transfer of ownership of an eli-
20 gible privately held company to a passive
21 buyer or group of passive buyers.

22 “(ix) Binds a party to a transfer of
23 ownership of an eligible privately held com-
24 pany.

1 “(C) DISQUALIFICATION.—An M&A broker
2 is not exempt from registration under this para-
3 graph if such broker (and if and as applicable,
4 including any officer, director, member, man-
5 ager, partner, or employee of such broker)—

6 “(i) has been barred from association
7 with a broker or dealer by the Commission,
8 any State, or any self-regulatory organiza-
9 tion; or

10 “(ii) is suspended from association
11 with a broker or dealer

12 “(D) RULE OF CONSTRUCTION.—Nothing
13 in this paragraph shall be construed to limit
14 any other authority of the Commission to ex-
15 empt any person, or any class of persons, from
16 any provision of this title, or from any provision
17 of any rule or regulation thereunder.

18 “(E) DEFINITIONS.—In this paragraph:

19 “(i) BUSINESS COMBINATION RE-
20 LATED SHELL COMPANY.—The term ‘busi-
21 ness combination related shell company’
22 means a shell company that is formed by
23 an entity that is not a shell company—

24 “(I) solely for the purpose of
25 changing the corporate domicile of

1 that entity solely within the United
2 States; or

3 “(II) solely for the purpose of
4 completing a business combination
5 transaction (as defined under section
6 230.165(f) of title 17, Code of Fed-
7 eral Regulations) among one or more
8 entities other than the company itself,
9 none of which is a shell company.

10 “(ii) CONTROL.—The term ‘control’
11 means the power, directly or indirectly, to
12 direct the management or policies of a
13 company, whether through ownership of
14 securities, by contract, or otherwise. There
15 is a presumption of control if, upon com-
16 pletion of a transaction, the buyer or group
17 of buyers—

18 “(I) has the right to vote 25 per-
19 cent or more of a class of voting secu-
20 rities or the power to sell or direct the
21 sale of 25 percent or more of a class
22 of voting securities; or

23 “(II) in the case of a partnership
24 or limited liability company, has the
25 right to receive upon dissolution, or

1 has contributed, 25 percent or more
2 of the capital.

3 “(iii) ELIGIBLE PRIVATELY HELD
4 COMPANY.—The term ‘eligible privately
5 held company’ means a privately held com-
6 pany that meets both of the following con-
7 ditions:

8 “(I) The company does not have
9 any class of securities registered, or
10 required to be registered, with the
11 Commission under section 12 or with
12 respect to which the company files, or
13 is required to file, periodic informa-
14 tion, documents, and reports under
15 subsection (d).

16 “(II) In the fiscal year ending
17 immediately before the fiscal year in
18 which the services of the M&A broker
19 are initially engaged with respect to
20 the securities transaction, the com-
21 pany meets either or both of the fol-
22 lowing conditions (determined in ac-
23 cordance with the historical financial
24 accounting records of the company):

1 “(aa) The earnings of the
2 company before interest, taxes,
3 depreciation, and amortization
4 are less than \$25,000,000.

5 “(bb) The gross revenues of
6 the company are less than
7 \$250,000,000.

8 For purposes of this subclause, the
9 Commission may by rule modify the
10 dollar figures if the Commission deter-
11 mines that such a modification is nec-
12 essary or appropriate in the public in-
13 terest or for the protection of inves-
14 tors.

15 “(iv) M&A BROKER.—The term ‘M&A
16 broker’ means a broker, and any person
17 associated with a broker, engaged in the
18 business of effecting securities transactions
19 solely in connection with the transfer of
20 ownership of an eligible privately held com-
21 pany, regardless of whether the broker acts
22 on behalf of a seller or buyer, through the
23 purchase, sale, exchange, issuance, repur-
24 chase, or redemption of, or a business com-
25 bination involving, securities or assets of

1 the eligible privately held company, if the
2 broker reasonably believes that—

3 “(I) upon consummation of the
4 transaction, any person acquiring se-
5 curities or assets of the eligible pri-
6 vately held company, acting alone or
7 in concert—

8 “(aa) will control the eligible
9 privately held company or the
10 business conducted with the as-
11 sets of the eligible privately held
12 company; and

13 “(bb) directly or indirectly,
14 will be active in the management
15 of the eligible privately held com-
16 pany or the business conducted
17 with the assets of the eligible pri-
18 vately held company, including
19 without limitation, for example,
20 by—

21 “(AA) electing execu-
22 tive officers;

23 “(BB) approving the
24 annual budget;

1 “(CC) serving as an ex-
2 ecutive or other executive
3 manager; or

4 “(DD) carrying out
5 such other activities as the
6 Commission may, by rule,
7 determine to be in the public
8 interest; and

9 “(II) if any person is offered se-
10 curities in exchange for securities or
11 assets of the eligible privately held
12 company, such person will, prior to
13 becoming legally bound to consum-
14 mate the transaction, receive or have
15 reasonable access to the most recent
16 fiscal year-end financial statements of
17 the issuer of the securities as custom-
18 arily prepared by the management of
19 the issuer in the normal course of op-
20 erations and, if the financial state-
21 ments of the issuer are audited, re-
22 viewed, or compiled, any related state-
23 ment by the independent accountant,
24 a balance sheet dated not more than
25 120 days before the date of the offer,

1 and information pertaining to the
2 management, business, results of op-
3 erations for the period covered by the
4 foregoing financial statements, and
5 material loss contingencies of the
6 issuer.

7 “(v) SHELL COMPANY.—The term
8 ‘shell company’ means a company that at
9 the time of a transaction with an eligible
10 privately held company—

11 “(I) has no or nominal oper-
12 ations; and

13 “(II) has—

14 “(aa) no or nominal assets;

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

17 “(cc) assets consisting of
18 any amount of cash and cash
19 equivalents and nominal other as-
20 sets.

21 “(F) INFLATION ADJUSTMENT.—

22 “(i) IN GENERAL.—On the date that
23 is 5 years after the date of the enactment
24 of this paragraph, and every 5 years there-

1 after, each dollar amount in subparagraph
2 (E)(iii)(II) shall be adjusted by—

3 “(I) dividing the annual value of
4 the Employment Cost Index For
5 Wages and Salaries, Private Industry
6 Workers (or any successor index), as
7 published by the Bureau of Labor
8 Statistics, for the calendar year pre-
9 ceeding the calendar year in which the
10 adjustment is being made by the an-
11 nual value of such index (or suc-
12 cessor) for the calendar year ending
13 December 31, 2020; and

14 “(II) multiplying such dollar
15 amount by the quotient obtained
16 under subclause (I).

17 “(ii) ROUNDING.—Each dollar
18 amount determined under clause (i) shall
19 be rounded to the nearest multiple of
20 \$100,000.”.

21 **SEC. 3. EFFECTIVE DATE.**

22 This Act and any amendment made by this Act shall
23 take effect on the date that is 90 days after the date of
24 the enactment of this Act.

