

## CHAPTER 2016-111

### Committee Substitute for Committee Substitute for Senate Bill No. 286

An act relating to merger and acquisition brokers; amending s. 517.061, F.S.; providing an exemption from certain registration requirements with the Office of Financial Regulation for a specified offer or sale of securities; amending s. 517.12, F.S.; defining terms; requiring a merger and acquisition broker to receive certain written assurances from a specified person prior to the completion of specified securities transactions; providing an exemption from certain registration requirements with the office for a merger and acquisition broker under certain circumstances; specifying disqualifying conditions for the exemption; providing an effective date.

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

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

517.061 Exempt transactions.—Except as otherwise provided in s. 517.0611 for a transaction listed in subsection (21), the exemption for each transaction listed below is self-executing and does not require any filing with the office before claiming the exemption. Any person who claims entitlement to any of the exemptions bears the burden of proving such entitlement in any proceeding brought under this chapter. The registration provisions of s. 517.07 do not apply to any of the following transactions; however, such transactions are subject to the provisions of ss. 517.301, 517.311, and 517.312:

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

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

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

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

1. “Broker” has the same meaning as “dealer” as defined in s. 517.021.
2. “Control person” means an individual or entity that possesses the power, directly or indirectly, to direct the management or policies of a company through ownership of securities, by contract, or otherwise. A person is presumed to be a control person of a company if, with respect to a particular company, the person:

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

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

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

3. “Eligible privately held company” means a company that meets all of the following conditions:

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

b. In the fiscal year immediately preceding the fiscal year during which the merger and acquisition broker begins to provide services for the securities transaction, the company, in accordance with its historical financial accounting records, has earnings before interest, taxes, depreciation, and amortization of less than \$25 million or has gross revenues of less than \$250 million. On July 1, 2021, and every 5 years thereafter, each dollar amount in this sub-subparagraph shall be adjusted by dividing the annual value of the Employment Cost Index for wages and salaries for 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 index for the calendar year ending December 31, 2012, and multiplying such dollar amount by the quotient obtained. Each dollar amount determined under this sub-subparagraph shall be rounded to the nearest multiple of \$100,000.

4. “Merger and acquisition broker” means any broker 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 that 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.

5. “Public shell company” means a company that at the time of a transaction with an eligible privately held company:

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

b. Has nominal or no operations; and

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

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

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

2. If any person is offered securities in exchange for securities or assets of the eligible privately held company, such person will, before becoming legally bound to complete the transaction, receive or be given reasonable access to the most recent year-end financial statements of the issuer of the securities offered in exchange. The most recent year-end financial statements shall be customarily prepared by the issuer's management in the normal course of operations. If the financial statements of the issuer are audited, reviewed, or compiled, the most recent year-end financial statements must include any related statement by the independent certified public accountant; a balance sheet dated not more than 120 days before the date of the exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and material loss contingencies of the issuer.

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

1. 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;

2. Engages on behalf of an issuer in a public offering of any class of securities which is registered, or which is required to be registered, with the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a et seq., or with the office under s.

517.07; or for which the issuer files, or is required to file, periodic information, documents, and reports under Section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. s. 78o(d);

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

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

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

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

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

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

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.