

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2274
OFFERED BY M^R. Huizenga

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 2013”.

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 and any per-
14 son associated with an M&A broker shall be ex-
15 empt from registration under this section.

16 “(B) EXCLUDED ACTIVITIES.—An M&A
17 broker or a person associated with an M&A
18 broker is not exempt from registration under

1 this paragraph if such broker or associated per-
2 son does any of the following:

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

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

17 “(C) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall be construed to limit
19 any other authority of the Commission to ex-
20 empt any person, or any class of persons, from
21 any provision of this title, or from any provision
22 of any rule or regulation thereunder.

23 “(D) DEFINITIONS.—In this paragraph:

24 “(i) CONTROL.—The term ‘control’
25 means the power, directly or indirectly, to

1 direct the management or policies of a
2 company, whether through ownership of
3 securities, by contract, or otherwise. There
4 is a presumption of control for any person
5 who—

6 “(I) is a director, general part-
7 ner, member or manager of a limited
8 liability company, or officer exercising
9 executive responsibility (or has similar
10 status or functions);

11 “(II) has the right to vote 20
12 percent or more of a class of voting
13 securities or the power to sell or direct
14 the sale of 20 percent or more of a
15 class of voting securities; or

16 “(III) in the case of a partner-
17 ship or limited liability company, has
18 the right to receive upon dissolution,
19 or has contributed, 20 percent or
20 more of the capital.

21 “(ii) **ELIGIBLE PRIVATELY HELD**
22 **COMPANY.**—The term ‘eligible privately
23 held company’ means a company that
24 meets both of the following conditions:

1 “(I) The company does not have
2 any class of securities registered, or
3 required to be registered, with the
4 Commission under section 12 or with
5 respect to which the company files, or
6 is required to file, periodic informa-
7 tion, documents, and reports under
8 subsection (d).

9 “(II) In the fiscal year ending
10 immediately before the fiscal year in
11 which the services of the M&A broker
12 are initially engaged with respect to
13 the securities transaction, the com-
14 pany meets either or both of the fol-
15 lowing conditions (determined in ac-
16 cordance with the historical financial
17 accounting records of the company):

18 “(aa) The earnings of the
19 company before interest, taxes,
20 depreciation, and amortization
21 are less than \$25,000,000.

22 “(bb) The gross revenues of
23 the company are less than
24 \$250,000,000.

1 “(iii) M&A BROKER.—The term ‘M&A
2 broker’ means a broker engaged in the
3 business of effecting securities transactions
4 solely in connection with the transfer of
5 ownership of an eligible privately held com-
6 pany, regardless of whether the broker acts
7 on behalf of a seller or buyer, through the
8 purchase, sale, exchange, issuance, repur-
9 chase, or redemption of, or a business com-
10 bination involving, securities or assets of
11 the eligible privately held company, if the
12 broker reasonably believes that—

13 “(I) upon consummation of the
14 transaction, any person acquiring se-
15 curities or assets of the eligible pri-
16 vately held company, acting alone or
17 in concert, will control and, directly or
18 indirectly, will be active in the man-
19 agement of the eligible privately held
20 company or the business conducted
21 with the assets of the eligible privately
22 held company; and

23 “(II) if any person is offered se-
24 curities in exchange for securities or
25 assets of the eligible privately held

1 company, such person will, prior to
2 becoming legally bound to consum-
3 mate the transaction, receive or have
4 reasonable access to the most recent
5 year-end balance sheet, income state-
6 ment, statement of changes in finan-
7 cial position, and statement of owner's
8 equity of the issuer of the securities
9 offered in exchange, and, if the finan-
10 cial statements of the issuer are au-
11 dited, the related report of the inde-
12 pendent auditor, a balance sheet
13 dated not more than 120 days before
14 the date of the offer, and information
15 pertaining to the management, busi-
16 ness, results of operations for the pe-
17 riod covered by the foregoing financial
18 statements, and material loss contin-
19 gencies of the issuer.

20 “(E) INFLATION ADJUSTMENT.—

21 “(i) IN GENERAL.—On the date that
22 is 5 years after the date of the enactment
23 of the Small Business Mergers, Acquisi-
24 tions, Sales, and Brokerage Simplification
25 Act of 2013, and every 5 years thereafter,

1 each dollar amount in subparagraph
2 (D)(ii)(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, 2012; 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.

Amend the title so as to read: “A bill to amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies.”.

