



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

March 9, 2018

The Honorable Michael Crapo
Chairman
Senate Committee on Banking, Housing, & Urban Affairs
538 Dirksen Senate Office Building
Washington, DC 20510

Re: The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017
(H.R. 477, as amended)

Dear Chairman Crapo:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I am writing to express strong support for H.R. 477, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017.

The Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act would establish an exemption from registration requirements under federal securities laws for persons serving as brokers in certain merger and acquisition deals (“M&A brokers”). State securities regulators have long shared Congress’s interest in establishing a more streamlined regulatory framework for persons serving as brokers in M&A deals that involve the transfer of securities, subject to certain conditions.² To that end, NASAA was pleased to support H.R. 477 when it was introduced in the House on January 12, 2017, and NASAA strongly supported the amended version of the legislation when it was approved by the House on December 7, 2017.³

The amendments to H.R. 477 adopted by the House prior to its passage are notable because they more closely align the bill with the framework for exemption from federal registration requirements established by the SEC in its “no-action” letter, dated January 31, 2014 (as revised on February 4, 2014, the “No-Action Letter”).⁴ Specifically, the House amendments

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² These conditions include: (1) the disqualification from the exemption of any broker or associated person who is a “bad actor,” or subject to suspension or revocation of registration; and (2) the inapplicability of the exemption to any M&A transaction where one party or more is a shell company.

³ See: H.Amdt.495 to H.R.477


⁴ Electronic copies of the No-Action Letter and the request letter to which it responded are available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2014/ma-brokers-013114.pdf>.

incorporate additional exclusions from the registration exemption, modeled on those set forth in the No-Action Letter, that stand to benefit investors and businesses and limit the ability of unregistered M&A brokers to misuse the exemption.⁵

In summary, NASAA believes that H.R. 477 appropriately balances the legitimate interests of all stakeholders, while maintaining significant safeguards for investors and small business owners. NASAA strongly supports the bill and looks forward to working with you and other members of the Senate Banking Committee to facilitate its consideration and passage.

Thank you for your consideration of NASAA's views. Please do not hesitate to contact me, or Michael Canning, NASAA Director of Policy & Government Affairs, at (202) 737-0900, if we may be of any additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Borg". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Joseph P. Borg
NASAA President and Alabama Securities Director

⁵ These additional exclusions apply to any M&A broker that: (1.) directly, or indirectly through any of its affiliates, provides financing related to the transfer of ownership of an eligible privately held company; (2.) assists any party to obtain financing from an unaffiliated third-party without complying with all other applicable laws in connection with such assistance, and disclosing any compensation in writing to the party; (3.) represents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents, and obtaining written from both parties to the joint representation; (4.) facilitates a transaction with a group of buyers formed with the assistance of the M&A broker; and (5.) engages in a transaction involving the transfer of ownership of an eligible privately held company to a passive buyer or group of passive buyers. Moreover, consistent with the No-Action Letter, the buyer(s), upon completion of the M&A transaction must control and actively operate the company or business conducted with the assets of the business.