AFR Americans for Financial Reform

December 7, 2017

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to urge you to vote in opposition to H.R. 477, which is being considered on the House floor this week.[1] This bill would unnecessarily exempt certain merger and acquisition (M&A) brokers from registering as broker-dealers with the Securities and Exchange Commission (SEC).

Misleadingly labeled the "Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2017," this legislation directs its regulatory relief and simplification to privately held companies reaching up to $250 million in annual gross revenues. Exemptions from broker-dealer registration requirements might be appropriate to lower regulatory compliance costs for small local businesses. However, and contrary to what the bill's title suggests, this $250 million revenue threshold far exceeds the size of small businesses that use ordinary M&A brokers and is far above the small business size standards put forward by the Small Business Administration.[2] The other financial threshold included in this bill—companies with less than $25 million in earnings before interest, taxes, depreciation, and amortization (EBITDA)—is also inadequate. This provision would allow unregistered brokers to conduct M&A transactions for companies worth billions of dollars—e.g., Tesla in 2012 was a multibillion-dollar company that would qualify under this threshold.

Not only would H.R. 477 exempt from registration requirements a number of agents involved in transfer of ownership of very large companies, it would also open a dangerous loophole that private equity firms could exploit to steer clear from broker-dealer rules. Any potential application to private equity is concerning, as the exemption from broker-dealer registration would restrict the SEC's ability to police private equity and would interfere with ongoing SEC investigations of potential abuses involving unregistered broker-dealer activities.[3]

Moreover, this bill is fundamentally unnecessary, as the SEC has already taken administrative relief to exempt M&A brokers from broker-dealer registration, while preserving its capacity to

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[1] Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/.

[2] U.S. Small Business Administration, "Table of Small Business Size Standards Matched to North American Industry Classification System Codes," Updated October 1, 2017, available at: http://bit.ly/2jhJa0a.

[3] Buccacio, Katherine, "Republicans Look to Ease PE Regulatory Burden", Private Equity Manager, January 13, 2015, available at: http://bit.ly/2nqIXw5; Morgenson, Gretchen, "Private Equity's Free Pass," New York Times, September 27, 2014, available at http://nyti.ms/2ANv28V.

enforce needed investor protections.[4] For example, under the SEC's relief, M&A brokers are prohibited from representing both parties in a same transaction without their written consent, in order to mitigate the conflict of interest; and, M&A brokers are prohibited from binding a party to an M&A transaction.[5] As noted in the Minority's views after last October's markup, "it has now been over three and a half years since the SEC issued its relief and there has been no evidence that these conditions are inappropriate or onerous."[6] However, this is not to say that just by legislating the SEC's no-action letter into law H.R. 477 becomes acceptable. We recognize the improvement its provisions add to the bill in the form of protections for investors and small businesses, but we continue to believe that M&A brokers and advisors should operate in a transparent industry subjected to registration and qualification requirements.

In short, disguised as a regulatory relief for small businesses, this legislation would exempt from registration requirements M&A brokers of transactions involving quite large privately held companies, while opening a deregulatory window of opportunity for private equity firms to exploit.

We also highlight the fact that organizations representing M&A broker-dealers and consumer advocacy groups find common ground in their opposition to this bill. For example, the Securities Industry and Financial Markets Association (SIFMA) has formally opposed this legislation because it "would expose small business owners and investors to unnecessary risk without any meaningful benefit from reduced regulatory compliance."[7] While the M&A Securities Group Inc. has expressed that this legislation "actually harms those business owners it intends to help."[8]

For all of these reasons, we urge you to oppose H.R. 477.

Thank you for your attention to this matter. For more information please contact AFR's Policy Director, Marcus Stanley, at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform

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[4] Securities and Exchange Commission, "No-Action Letter Re M&A Brokers," January 31, 2014 [Revised February 4, 2014], available at: http://bit.ly/2g1ehLg.
[5] Ibid.
[6] Committee on Financial Services Report on the Small Business Mergers, Acquisitions, Sales, And Brokerage Simplification Act Of 2017, November 30, 2017, available at: http://bit.ly/2nueugD.
[7] Securities Industry and Financial Markets Association (SIFMA), Letter to the Chairman and Ranking Member of the House Committee on Financial Services, October 10, 2017. (SIFMA advocates on behalf of the U.S. securities industry. They represent broker-dealers, banks, and asset managers).
[8] M&A Securities Group, Letter to the House Financial Services Committee Re: Broker-Dealers' Opposition to H.R. 477, October 10, 2017. (M&A Securities Group, Inc. is a broker-dealer registered with the SEC, FINRA and the majority of U.S. states).