



February 27, 2019

Hon. Mike Crapo, Chairman
Banking, Housing, and Urban Affairs Committee
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Hon. Sherrod Brown, Ranking Member
Banking, Housing, and Urban Affairs Committee
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Hon. Patrick Toomey, Chairman
Securities, Insurance, and Investment Subcommittee
United States Senate
Washington, D.C. 20515

Hon. Chris Van Hollen, Ranking Member
Securities, Insurance, and Investment Subcommittee
United States Senate
Washington, D.C. 20515

Re: Hearing (2/27/19) - Legislative Proposals on Capital Formation and Corporate Governance: Support for H.R. 609 (116th) the Small Business Mergers, Acquisitions, Sales and Brokerage Simplification Act of 2019 ~ the "M&A Brokers Bill"

Dear Senators Crapo, Brown, Toomey, and Van Hollen:

As you consider legislative proposals and priorities on capital formation, we strongly urge your inclusion of **HR 609 (116th)**—the "M&A Brokers Bill". Last session, Senators John Kennedy (LA-R) and Gary Peters (MI-D) co-sponsored and introduced **S. 3518, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act of 2018** but this Committee did not take up its consideration before the session ended.

This session **H.R. 609, substantively the same as S. 3518**, has been reintroduced and co-sponsored by Congressmen Huizenga (MI-R), Higgins (NY-D), Posey (FL-R), and Rutherford (FL-R). H.R. 609 is presently before the U.S. House Financial Services Committee. This legislation has been long-pending—113th, 114th, and 115th Congressional sessions—and its strong public policy underpinnings date have been long supported by both SEC staff positions and state securities regulators, among others.

In two prior Congressional sessions iterations of this bill have **twice unanimously passed** the U.S. House as stand-alones and **twice passed the U.S. House in separate bill packages**. Notably, this bill was among the titles included in the last session's House-passed JOBS Act 3.0 (S. 488 as House-amended). Last session, the House gave the **JOBS Act 3.0 overwhelming bipartisan approval, 406-4**, with both the Republican and the Democratic House leadership extolling its bipartisan origins and support:

- ❖ U.S. House Committee on Financial Services (HFSC) Chairman Jeb Hensarling (R-TX) spoke, on July 17, 2018, about how JOBS 3.0 came together in such a unified manner; "over the last several months, our committee has been working hard to put forth a number of capital-formation bills that are designed to breathe new life into markets that are suffocating under aging regulations. *Thanks to the efforts of the Ranking Member and members of the committee, on both sides of the aisle, we have a strong bipartisan package that will play an important role in sustaining long-term economic growth and global competitiveness.*"
- ❖ Adding to the HFSC chairman's comments, the HFSC's [Ranking Member Maxine Waters \(D-CA\)](#) said that JOBS 3.0 "helps small businesses grow by encouraging capital formation and requires the Securities and Exchange Commission to consider unique issues facing rural small businesses and small investment advisers. *This bill is an example of true bipartisanship. There are many onlookers who thought this could never happen.*"

Last session, H.R. 609's identical predecessor, H.R. 477, ***unanimously passed*** (426-0) the House on December 7, 2017. The House floor statements by both HFSC Chair Hensarling and Ranking Member Waters (<https://www.congress.gov/crec/2017/12/07/CREC-2017-12-07-pt1-PgH9739.pdf>) emphasized the importance of this bill to small businesses and extolled it as an example of bipartisan collaboration.

As the Committee crafts its legislative agenda for this 116th Congressional Session, H.R. 609 should be a high legislative priority. There are many important reasons:

- ❖ H.R. 609 would exempt merger and acquisition (*M&A*) advisors, intermediaries, and business brokers (together, *M&A brokers*) from federal **registration** as a “broker-dealer” when brokering the purchase and sale of ownership and control of privately owned companies. **This would make these professional services more widely and cost-effectively available to private business owners.** Under today’s “one-size-fits-all” regulatory regime, if sellers or buyers seek advice and assistance with a stock or equity purchase/sale or a merger, rather than an asset sale, then only an SEC-registered, “Wall Street-type” investment banker can broker the transaction—this inherently limits the parties’ choices, advice, and brokerage services in structuring their transactions.
- ❖ **H.R. 609 only creates a registration exemption—anti-fraud and all other investor protections continue to apply.** The bill *adds protections* not in the SEC’s most recent M&A Brokers no-action letter (Jan. 31, 2014), including size caps the SEC is authorized to amend if that is deemed in the public interest. Importantly, “bad actors” are disqualified from relying upon this registration exemption and it does not allow transactions involving “public shell” companies. Moreover, the exemption’s conditions prevent an M&A broker from providing financing or handling the parties’ funds or securities, and so the exemption cannot be misused by private equity firms or banks.
- ❖ **Small business owners and M&A brokers deserve a clear statement of what federal law requires without the necessity of hiring securities lawyers to explain it.** Like its progenitors, H.R. 609 would codify into law the SEC staff’s long-held policy view that M&A brokers need not register with the SEC as a “broker” under the Securities Exchange Act of 1934, as amended, when assisting business sellers and buyers transfer the ownership of their privately-held companies. Importantly, the SEC no-action letters do not change the law and, indeed, Chairman Clayton’s *Statement Regarding SEC Staff Views*, September 13, 2018 (<https://www.sec.gov/news/public-statement/statement-clayton-091318>), makes clear that no-action letters are not binding on the Commission—let alone anyone else.
- ❖ **Strong public policy considerations support this legislation.** Appropriately scaling regulation of M&A Brokers has been among the top recommendations in the 2006, 2007, 2008, 2009, 2010, 2011, and most recently, 2018 *Government-Industry Forum on Small Business Capital Formation* hosted by the SEC (<http://sec.gov/info/smallbus/sbforum.shtml>). The *Final Report of the Advisory Committee [to the SEC] on Smaller Public Companies* (2006), made the same recommendation (www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf), as did the *Report and Recommendations of the Private Placement Broker-Dealer Task Force* of the Business Law Section of the American Bar Association, 60 *Business Lawyer* 959-1028 (2005) (www.sec.gov/info/smallbus/2009gbforum/abareport062005.pdf).
- ❖ **This bill addresses a “small business issue” in your home states.** Privately owned businesses have no publicly reported “stock quotes”, their values are negotiated. Those values are enhanced when multiple prospective buyers compete in offering to acquire them. M&A brokers routinely

identify, vet, and inform prospective buyers about businesses for sale, and assist the seller in preparing for a sale. Once introduced, business sellers and buyers negotiate price and terms, often with the assistance of their own legal counsel, CPAs, and accountants.

- ❖ **State securities regulators support this federal legislation.** The North American Securities Administrators Association (NASAA) has supported this legislation through three sessions of Congress. NASAA adopted a “Model M&A Broker Rule” (<http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/MA-Broker-Model-Rule-adopted-Sept-29-2015-corrected.pdf>) drawn from prior iterations of this bill so as to best harmonize federal and state securities laws regulating M&A brokers. To date, **Alaska, Colorado, Florida, Georgia, Illinois, Iowa, Maryland, Michigan, Mississippi, Missouri, Pennsylvania, South Carolina, South Dakota, Texas, Utah, and Vermont** have all granted similar exemptive relief based on the NASAA model rule and/or the SEC M&A Brokers no-action letter, and other states are actively considering similar action.
- ❖ Support for H.R. 609 crosses the political spectrum to include the **North American Securities Administrators Association (NASAA)**—to the **U.S. Chamber of Commerce**—to the **Heritage Foundation’s affiliate, Heritage Action for America**.
- ❖ Our national professional associations, supported by 15 state and regional associations (list attached), represent **many hundreds of small business brokers**, and there are **thousands more small business brokers** working every day in all parts of the United States and its territories.
- ❖ Baby-boomer business owners are selling their businesses to retire, while entrepreneurs seek to grow through acquisitions. Nationwide, **this legislation would benefit many thousands of small business sellers and buyers every year.**
- ❖ Limited opposition has come from large investment banking firms defending their “**one-size-fits-all**” **regulatory barriers to competition** heavily burdening much smaller M&A brokerage firms.

We, therefore, ask you to **include H.R. 609** in the Committee’s priorities for the 116th Session. We would welcome its **inclusion in any “JOBS Act 3.1” bill package** and/or a stand-alone Senate companion bill.

We would be pleased to talk, meet, and provide additional information about this legislation, its broadly-based support, and its regulatory and legislative history. Our contact information is provided below. Thank you for your consideration.


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Hon. Tom Cotton
Hon. Mike Rounds
Hon. David Perdue
Hon. Thom Tillis
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OUR ORGANIZATIONS

Business Intermediaries Education Foundation (BIEF)

The Business Intermediaries Education Foundation is a non-profit organization founded with the mission of creating and enabling activities to uplift the profession through, but not limited to: (1) Information, (2) Awareness, (3) Research, (4) Outreach, (5) Analysis, (6) Exchange, (7) Understanding, (8) Cooperation, and (9) Education. The work of the BIEF is guided by a volunteer Board of Directors comprised of current and past chairs of the leading, international, business intermediary professional associations.

Specific objectives of the BIEF are: (1) Develop cooperation, education, and interchange among worldwide peers and with related professions; (2) Advise, educate, and persuade business buyers, sellers, and their advisors about the value and wisdom in employing a professional business broker or intermediary when selling, buying, or transferring ownership of a business; (3) Cause development and delivery of education and programs to enhance competencies and success throughout the business brokerage, mergers and acquisitions profession or its clientele; (4) Enable study and research into topics of value to the profession and its markets; (5) Establish perpetual self-funding to enable and sustain BEIF's vision and mission.

More information about BIEF is available on its website at: <http://www.biefoundation.org>.

Alliance of Merger & Acquisition Advisors (AM&AA) and its Members

The Alliance of Merger & Acquisition Advisors (AM&AA or The Alliance) is an international professional association of M&A intermediaries and related professionals. The Alliance serves the educational and transactional support needs of middle market M&A professionals worldwide. The Alliance was formed in 1998 to connect M&A intermediaries, CPAs, attorneys, and other experienced corporate financial investors and advisors, and currently has more than 900 professionals that are among the most highly recognized leaders in the industry. The Alliance draws upon proven capital resources combined with a think-tank of transactional expertise to better serve the many business investment needs of middle market companies worldwide. Some members are registered broker-dealers and others are unregistered in reliance upon SEC no-action letters and a variety of state-level transactional exemptions.

Members serve corporate and institutional sellers and buyers of privately held businesses with a wide range of transaction values. These essential corporate financial advisory and transaction services include investment banking, business brokerage, accounting, finance, valuation, tax law, and due diligence.

More information about AM&AA is available on its website at: <http://www.amaaonline.com>.

International Business Brokers Association (IBBA) and its Members

The International Business Brokers Association promotes members' professional development and interests to maximize public awareness of the business brokering profession. The IBBA supports entrepreneurship, and the concept that the investment risks of owning a business deserve a straightforward, professional and honest presentation to both seller and buyer. The IBBA's Standards and Code of Ethics impose obligations beyond those of ordinary commerce. We believe business brokers should be zealous in maintaining and improving ethical practices and sharing with their fellow business brokers a common responsibility for integrity and honor in their business transactions.

More information about IBBA is available on their website at: <http://www.ibba.org>.

M&A Source (MAS) and its Members

The M&A Source is organized and operated to promote members' professional development to better serve their clients' needs, and to maximize public awareness of services performed by intermediaries and ancillary advisors who facilitate solutions available for lower middle market merger and acquisition transactions.

The M&A Source was established in 1992 to address the challenges faced by merger and acquisition professionals. This international organization currently has more than 300 M&A dealmakers including intermediaries, investment bankers, attorneys, accountants, financial planners and others involved in the M&A process.

The goals of the M&A Source are: (1) To advance the members' deal making opportunities, (2) To advance the profession's practice standards by providing a wide array of programs, and (3) To advance each member's personal growth potential through a variety of forums whereby members exchange information and learn from one another.

In addition, there are specific professional duties outlined for M&A Source members. They include: (1) Represent clients in accomplishing the sale of all or part of their businesses, (2) Represent clients searching to acquire companies, divisions or product lines, (3) Advise clients on the current values, structures, strategies and methods for ownership transfers of middle market companies, (4) Facilitate the array of financing necessary to consummate the transaction, and (5) Preserve client confidentiality and transaction details.

More information about M&A Source is available on their website at: <http://www.masource.org>.

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