

118TH CONGRESS
1ST SESSION

H. R. 2590

To amend the Securities Exchange Act of 1934 to create a safe harbor
for finders and private placement brokers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2023

Mr. GARBARINO introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to create
a safe harbor for finders and private placement brokers,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unlocking Capital for
5 Small Businesses Act of 2023”.

6 **SEC. 2. SAFE HARBORS FOR PRIVATE PLACEMENT BRO-**
7 **KERS AND FINDERS.**

8 (a) IN GENERAL.—Section 15 of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78o) is amended by adding
10 at the end the following:

1 “(p) PRIVATE PLACEMENT BROKER SAFE HAR-
2 BOR.—

3 “(1) REGISTRATION REQUIREMENTS.—Not
4 later than 180 days after the date of the enactment
5 of this subsection the Commission shall promulgate
6 regulations with respect to private placement brokers
7 that are no more stringent than those imposed on
8 funding portals.

9 “(2) NATIONAL SECURITIES ASSOCIATIONS.—
10 Not later than 180 days after the date of the enact-
11 ment of this subsection the Commission shall pro-
12 mulgate regulations that require the rules of any na-
13 tional securities association to allow a private place-
14 ment broker to become a member of such national
15 securities association subject to reduced membership
16 requirements consistent with this subsection.

17 “(3) DISCLOSURES REQUIRED.—Before effect-
18 ing a transaction, a private placement broker shall
19 disclose clearly and conspicuously, in writing, to all
20 parties to the transaction as a result of the broker’s
21 activities—

22 “(A) that the broker is acting as a private
23 placement broker;

24 “(B) the amount of any payment or antici-
25 pated payment for services rendered as a pri-

1 vate placement broker in connection with such
2 transaction;

3 “(C) the person to whom any such pay-
4 ment is made; and

5 “(D) any beneficial interest in the issuer,
6 direct or indirect, of the private placement
7 broker, of a member of the immediate family of
8 the private placement broker, of an associated
9 person of the private placement broker, or of a
10 member of the immediate family of such associ-
11 ated person.

12 “(4) PRIVATE PLACEMENT BROKER DE-
13 FINED.—In this subsection, the term ‘private place-
14 ment broker’ means a person that—

15 “(A) receives transaction-based compensa-
16 tion—

17 “(i) for effecting a transaction by—

18 “(I) introducing an issuer of se-
19 curities and a buyer of such securities
20 in connection with the sale of a busi-
21 ness effected as the sale of securities;
22 or

23 “(II) introducing an issuer of se-
24 curities and a buyer of such securities
25 in connection with the placement of

1 securities in transactions that are ex-
2 empt from registration requirements
3 under the Securities Act of 1933; and
4 “(ii) that is not with respect to—
5 “(I) a class of publicly traded se-
6 curities;
7 “(II) the securities of an invest-
8 ment company (as defined in section 3
9 of the Investment Company Act of
10 1940); or
11 “(III) a variable or equity-in-
12 dexed annuity or other variable or eq-
13 uity-indexed life insurance product;
14 “(B) with respect to a transaction for
15 which such transaction-based compensation is
16 received—
17 “(i) does not handle or take posses-
18 sion of the funds or securities; and
19 “(ii) does not engage in an activity
20 that requires registration as an investment
21 adviser under State or Federal law; and
22 “(C) is not a finder as defined under sub-
23 section (q).
24 “(q) FINDER SAFE HARBOR.—

1 “(1) NONREGISTRATION.—A finder is exempt
2 from the registration requirements of this Act.

3 “(2) NATIONAL SECURITIES ASSOCIATIONS.—A
4 finder shall not be required to become a member of
5 any national securities association.

6 “(3) FINDER DEFINED.—In this subsection, the
7 term ‘finder’ means a person described in para-
8 graphs (A) and (B) of subsection (p)(4) that—

9 “(A) receives transaction-based compensa-
10 tion of equal to or less than \$500,000 in any
11 calendar year;

12 “(B) receives transaction-based compensa-
13 tion in connection with transactions that result
14 in a single issuer selling securities valued at
15 equal to or less than \$15 million in any cal-
16 endar year;

17 “(C) receives transaction-based compensa-
18 tion in connection with transactions that result
19 in any combination of issuers selling securities
20 valued at equal to or less than \$30 million in
21 any calendar year; or

22 “(D) receives transaction-based compensa-
23 tion in connection with fewer than 16 trans-
24 actions that are not part of the same offering

1 or are otherwise unrelated in any calendar
2 year.”.

3 (b) VALIDITY OF CONTRACTS WITH REGISTERED
4 PRIVATE PLACEMENT BROKERS AND FINDERS.—Section
5 29 of the Securities Exchange Act (15 U.S.C. 78cc) is
6 amended by adding at the end the following:

7 “(d) Subsection (b) shall not apply to a contract
8 made for a transaction if—

9 “(1) the transaction is one in which the issuer
10 engaged the services of a broker or dealer that is not
11 registered under this Act with respect to such trans-
12 action;

13 “(2) such issuer received a self-certification
14 from such broker or dealer certifying that such
15 broker or dealer is a registered private placement
16 broker under section 15(p) or a finder under section
17 15(q); and

18 “(3) the issuer either did not know that such
19 self-certification was false or did not have a reason-
20 able basis to believe that such self-certification was
21 false.”.

22 (c) REMOVAL OF PRIVATE PLACEMENT BROKERS
23 FROM DEFINITIONS OF BROKER.—

24 (1) RECORDS AND REPORTS ON MONETARY IN-
25 STRUMENTS TRANSACTIONS.—Section 5312 of title

1 31, United States Code, is amended in subsection
 2 (a)(2)(G) by inserting “with the exception of a pri-
 3 vate placement broker as defined in section 15(p)(4)
 4 of the Securities Exchange Act of 1934 (15 U.S.C.
 5 78o(p)(4))” before the semicolon at the end.

6 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
 7 tion 3(a)(4) of the Securities Exchange Act of 1934
 8 (15 U.S.C. 78c(a)(4)) is amended by adding at the
 9 end the following:

10 “(G) PRIVATE PLACEMENT BROKERS.—A
 11 private placement broker as defined in section
 12 15(p)(4) is not a broker for the purposes of this
 13 Act.”.

14 **SEC. 3. LIMITATIONS ON STATE LAW.**

15 Section 15(i) of the Securities Exchange Act of 1934
 16 (15 U.S.C. 78o(i)) is amended—

17 (1) by redesignating paragraphs (3) and (4) as
 18 paragraphs (4) and (5), respectively;

19 (2) by inserting after paragraph (2) the fol-
 20 lowing:

21 “(3) PRIVATE PLACEMENT BROKERS AND FIND-
 22 ERS.—

23 “(A) IN GENERAL.—No State or political
 24 subdivision thereof may enforce any law, rule,
 25 regulation, or other administrative action that

1 imposes greater registration, audit, financial
2 recordkeeping, or reporting requirements on a
3 private placement broker or finder than those
4 that are required under subsections (p) and (q),
5 respectively.

6 “(B) DEFINITION OF STATE.—For pur-
7 poses of this paragraph, the term ‘State’ in-
8 cludes the District of Columbia and each terri-
9 tory of the United States.”; and

10 (3) in paragraph (4), as so redesignated, by
11 striking “paragraph (3)” and inserting “paragraph
12 (5)”.

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