

MINORITY VIEWS ON HR 686

HR 686 would exempt merger and acquisition brokers from registration as broker-dealers with the Securities and Exchange Commission. Under the bill, M&A brokers are defined as brokers that facilitate the transfer of ownership of privately held companies with earnings of less than \$25 million or revenues of less than \$250 million annually. M&A brokers would also be exempt from the Securities Investor Protection Act of 1970.

When the Committee considered this bill last Congress, there was broad consensus that its purpose was to encourage the SEC to finalize its no-action relief to exempt certain merger and acquisition brokers from registration. Two weeks after that bill passed in the House, the SEC issued the exemption, making HR 686 in this Congress seem moot.

Some have pointed out that because of the nature of the relief provided by the SEC, the agency could retract its no-action letter at any time (something that the agency rarely does). Therefore, they say that the bill is necessary to provide legal certainty. However, if that is the goal of this bill, it should more closely track the SEC's relief, including the additional investor protections that are omitted from the bill.

To address this concern, Democrats offered an amendment that would amend the bill to include the several additional conditions that the SEC felt necessary to impose when providing the exemption. Those protections: exclude shell companies from eligible M&A transactions; exclude bad actors from being M&A brokers; prohibit M&A brokers from providing financing for the M&A transaction; require M&A brokers who represent both the buyer and the seller to obtain written consent from both parties to the transaction; prohibit passive buyers in the M&A transaction; prohibit M&A brokers from binding a party to a transfer of ownership of an eligible private company; and provide that any securities provided to the buyer or M&A broker in the transaction would be restricted securities. There has been no evidence that these conditions are inappropriate or onerous.

By rejecting the amendment on a party line vote (33-26), Republicans deprive investors from needed safeguards in M&A transactions with little SEC oversight. For these reasons, we oppose HR 686.

Maxine Waters