

AMENDMENT TO RULES COMMITTEE PRINT 114-

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OFFERED BY MR. SHERMAN OF CALIFORNIA

Page 9, after line 16, insert the following:

1 “(C) DISQUALIFICATION FOR CERTAIN
2 CONDUCT.—An M&A broker may not make use
3 of the exemption under this paragraph if the
4 broker—

5 “(i) has been barred from association
6 with a broker or dealer by the Commission,
7 any State, or any self-regulatory organiza-
8 tion; or

9 “(ii) is suspended from association
10 with a broker or dealer.

11 “(D) TRANSACTIONS INVOLVING SHELL
12 COMPANIES PROHIBITED.—

13 “(i) IN GENERAL.—An M&A broker
14 making use of the exemption under this
15 paragraph may not engage in a transaction
16 involving a shell company, other than a
17 business combination related shell com-
18 pany.

1 “(ii) SHELL COMPANY DEFINED.—In
2 this subparagraph, the term ‘shell com-
3 pany’ means a company that—

4 “(I) has no or nominal oper-
5 ations; and

6 “(II) has—

7 “(aa) no or nominal assets;

8 “(bb) assets consisting solely
9 of cash and cash equivalents; or

10 “(cc) assets consisting of
11 any amount of cash and cash
12 equivalents and nominal other as-
13 sets.

14 “(iii) BUSINESS COMBINATION RE-
15 LATED SHELL COMPANY DEFINED.—In
16 this subparagraph, the term ‘business com-
17 bination related shell company’ means a
18 shell company that is formed by an entity
19 that is not a shell company solely for the
20 purpose of—

21 “(I) changing the corporate
22 domicile of such entity solely within
23 the United States; or

24 “(II) completing a business com-
25 bination transaction (as defined in

1 section 230.165(f) of title 17, Code of
2 Federal Regulations) among one or
3 more entities other than the shell
4 company, none of which is a shell
5 company.

6 “(E) FINANCING BY M&A BROKERS PRO-
7 HIBITED.—An M&A broker may not provide fi-
8 nancing, either directly or indirectly, related to
9 the transfer of ownership of an eligible privately
10 held company.

11 “(F) DISCLOSURE AND CONSENT.—To the
12 extent an M&A broker represents both buyers
13 and sellers of an eligible privately held com-
14 pany, the broker shall provide clear written dis-
15 closure as to the parties the broker represents
16 and obtain written consent from all parties to
17 the joint representation.

18 “(G) PASSIVE BUYERS PROHIBITED.—An
19 M&A broker may not engage in a transaction
20 involving the transfer of ownership of an eligi-
21 ble privately held company to a passive buyer or
22 group of passive buyers.

23 “(H) NO AUTHORITY TO BIND PARTY TO
24 TRANSFER.—The M&A broker may not bind a

1 party to a transfer of ownership of an eligible
2 privately held company.

3 “(I) RESTRICTED SECURITIES.—Any secu-
4 rities purchased or received by the buyer or
5 M&A broker in connection with the transfer of
6 ownership of an eligible privately held company
7 are restricted securities (as defined in section
8 230.144(a)(3) of title 17, Code of Federal Reg-
9 ulations).

Page 10, line 8, insert “, and” after “officer”.

Page 10, beginning on line 11, strike “20 percent”
and insert “25 percent”.

Page 10, line 14, strike “20 percent” and insert “25
percent”.

Page 10, line 19, strike “20 percent” and insert “25
percent”.

Page 12, beginning on line 19, strike “will be active
in the management of” and insert “will actively operate”.

