Has Congress lost the ability o will to pass a unanimous bipar small business bill?

BY JOHN ZAYAC, OPINION CONTRIBUTOR — 05/29/19 08:45 AM EDT
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In the first quarter of 2019, Congress has passed little legislation - few bills affecting small business. Investigations, impeachment, and politically motivated bills have been the agenda.

The small business community has issued a challenge: Can this Congress finally pass an overwhelmingly bipartisan small business bill?

In the 115th Congress, the U.S. House of Representatives unanimously passed HR 477, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act with a 426 – 0 recorded vote; but it failed to become law because time ran out in the U.S. Senate at the end of 2018.

HR 477 was publicly praised for its bipartisanship by the chairman and ranking member of the House Committee on Financial Services, Jeb Hensarling and Maxine Waters, respectively - opposite sides of the political spectrum coming together in a true bipartisan manner to pass this critical small business bill. Speaking on the House floor, Hensarling and Waters both emphasized the importance of HR 477 to small businesses and extoled it as a quintessential example of bipartisan collaboration.

Later in the session, Hensarling and Waters - again in bipartisan fashion - added HR 477 to the JOBS and Investor Confidence Act of 2018 (JOBS Act

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3.0), passing the U.S. House 406-4. Sens. Gary Peters (D-Mich.) and John Kennedy (R-La.) introduced the companion bill to HR 477 in the Senate. The 115th Congress adjourned before the Senate could act on either bill.

HR 477 would codify into law the no-action letter issued in 2014 by the Securities and Exchange Commission (SEC) staff. No-action letters are not legally binding, even on the Commission; hence the need for legislation. Outside groups supporting HR 477 have been broad, active, and span the political spectrum:

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- North American Securities Administrators Association (NASAA);
- S. Chamber of Commerce;
- The major national M&A professional associations and foundations;
- Fifteen state and regional M&A professional associations.

Here's the challenge

On Jan. 16, 2019, Reps. Bill Huizenga (R-Mich.), Brian Higgins (D-N.Y.), and Bill Posey (R-Fla.) re-introduced the unanimously bipartisan Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act - now designated HR 609 for the 116th Congress. It is comma for comma the same bipartisan bill as HR 477.

Historically, when the Senate received unanimously passed bills from the House, the Senate majority leader would frequently bypass assigning it to a Senate committee and put it directly on the Senate floor for passage by voice vote; assuming it wasn't a contentious issue.

But today, even unanimous bipartisan bills like HR 477/HR 609 are subject to filibusters, duplicate committee hearings, and partisan politics.

Let's see if the Senate and House can take up this challenge and get this small, yet important, bipartisan pro-business bill to the president's desk this year.

HR 609

HR 609 would exempt merger and acquisition (M&A) advisors, intermediaries, and business brokers from federal registration as a "broker-dealer" when brokering the purchase or sale 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 merger, rather than an asset sale, only an SEC-registered, FINRA member, "Wall Street-type" investment banker can legally broker the transaction.

HR 609 creates a federal 'broker' registration exemption only - all anti-fraud and other investor protections continue to apply. The bill adds protections not contained in the SEC's no-action letter including size caps the SEC is authorized to amend. Importantly, "bad actors" are disqualified from relying upon this exemption and it does not allow transactions involving "public shell" companies. The bill prohibits M&A brokers from

raising capital, holding funds or securities, or financing transactions, so private equity and other investor groups cannot rely on it.

Significantly, NASAA (state securities regulators) adopted a "Model M&A Broker Rule" drawn from prior iterations of this bill to 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 exemptive relief based on the NASAA model rule and/or the SEC M&A Broker no-action letter, and other states are actively considering similar action.

Let's get it across the finish line this year!

Small business owners and M&A brokers deserve a clear statement of what federal law requires. HR 609 does just that.

HR 609 has become a litmus test to see if this Congress can pass a truly bipartisan, pro-small business bill.

When Maxine Waters, Jeb Hensarling, and the entire U.S. House of Representatives can agree that this is an excellent bill, then it's time for the U.S. Senate to get it enacted this year!

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