

113TH CONGRESS
2D SESSION

H. R. 2274

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2014

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Securities Exchange Act of 1934 to exempt from registration brokers performing services in connection with the transfer of ownership of smaller privately held companies.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Merg-
3 ers, Acquisitions, Sales, and Brokerage Simplification Act
4 of 2014”.

5 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**
6 **QUISITION BROKERS.**

7 Section 15(b) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(b)) is amended by adding at the end the
9 following:

10 “(13) REGISTRATION EXEMPTION FOR MERGER
11 AND ACQUISITION BROKERS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an M&A broker shall be ex-
14 empt from registration under this section.

15 “(B) EXCLUDED ACTIVITIES.—An M&A
16 broker is not exempt from registration under
17 this paragraph if such broker does any of the
18 following:

19 “(i) Directly or indirectly, in connec-
20 tion with the transfer of ownership of an
21 eligible privately held company, receives,
22 holds, transmits, or has custody of the
23 funds or securities to be exchanged by the
24 parties to the transaction.

25 “(ii) Engages on behalf of an issuer in
26 a public offering of any class of securities

1 that is registered, or is required to be reg-
2 istered, with the Commission under section
3 12 or with respect to which the issuer files,
4 or is required to file, periodic information,
5 documents, and reports under subsection
6 (d).

7 “(C) RULE OF CONSTRUCTION.—Nothing
8 in this paragraph shall be construed to limit
9 any other authority of the Commission to ex-
10 empt any person, or any class of persons, from
11 any provision of this title, or from any provision
12 of any rule or regulation thereunder.

13 “(D) DEFINITIONS.—In this paragraph:

14 “(i) CONTROL.—The term ‘control’
15 means the power, directly or indirectly, to
16 direct the management or policies of a
17 company, whether through ownership of
18 securities, by contract, or otherwise. There
19 is a presumption of control for any person
20 who—

21 “(I) is a director, general part-
22 ner, member or manager of a limited
23 liability company, or officer exercising
24 executive responsibility (or has similar
25 status or functions);

1 “(II) has the right to vote 20
2 percent or more of a class of voting
3 securities or the power to sell or direct
4 the sale of 20 percent or more of a
5 class of voting securities; or

6 “(III) in the case of a partner-
7 ship or limited liability company, has
8 the right to receive upon dissolution,
9 or has contributed, 20 percent or
10 more of the capital.

11 “(ii) ELIGIBLE PRIVATELY HELD
12 COMPANY.—The term ‘eligible privately
13 held company’ means a company that
14 meets both of the following conditions:

15 “(I) The company does not have
16 any class of securities registered, or
17 required to be registered, with the
18 Commission under section 12 or with
19 respect to which the company files, or
20 is required to file, periodic informa-
21 tion, documents, and reports under
22 subsection (d).

23 “(II) In the fiscal year ending
24 immediately before the fiscal year in
25 which the services of the M&A broker

1 are initially engaged with respect to
2 the securities transaction, the com-
3 pany meets either or both of the fol-
4 lowing conditions (determined in ac-
5 cordance with the historical financial
6 accounting records of the company):

7 “(aa) The earnings of the
8 company before interest, taxes,
9 depreciation, and amortization
10 are less than \$25,000,000.

11 “(bb) The gross revenues of
12 the company are less than
13 \$250,000,000.

14 “(iii) M&A BROKER.—The term ‘M&A
15 broker’ means a broker, and any person
16 associated with a broker, engaged in the
17 business of effecting securities transactions
18 solely in connection with the transfer of
19 ownership of an eligible privately held com-
20 pany, regardless of whether the broker acts
21 on behalf of a seller or buyer, through the
22 purchase, sale, exchange, issuance, repur-
23 chase, or redemption of, or a business com-
24 bination involving, securities or assets of

1 the eligible privately held company, if the
2 broker reasonably believes that—

3 “(I) upon consummation of the
4 transaction, any person acquiring se-
5 curities or assets of the eligible pri-
6 vately held company, acting alone or
7 in concert, will control and, directly or
8 indirectly, will be active in the man-
9 agement of the eligible privately held
10 company or the business conducted
11 with the assets of the eligible privately
12 held company; and

13 “(II) if any person is offered se-
14 curities in exchange for securities or
15 assets of the eligible privately held
16 company, such person will, prior to
17 becoming legally bound to consum-
18 mate the transaction, receive or have
19 reasonable access to the most recent
20 year-end balance sheet, income state-
21 ment, statement of changes in finan-
22 cial position, and statement of owner’s
23 equity of the issuer of the securities
24 offered in exchange, and, if the finan-
25 cial statements of the issuer are au-

1 dited, the related report of the inde-
2 pendent auditor, a balance sheet
3 dated not more than 120 days before
4 the date of the offer, and information
5 pertaining to the management, busi-
6 ness, results of operations for the pe-
7 riod covered by the foregoing financial
8 statements, and material loss contin-
9 gencies of the issuer.

10 “(E) INFLATION ADJUSTMENT.—

11 “(i) IN GENERAL.—On the date that
12 is 5 years after the date of the enactment
13 of the Small Business Mergers, Acquisi-
14 tions, Sales, and Brokerage Simplification
15 Act of 2014, and every 5 years thereafter,
16 each dollar amount in subparagraph
17 (D)(ii)(II) shall be adjusted by—

18 “(I) dividing the annual value of
19 the Employment Cost Index For
20 Wages and Salaries, Private Industry
21 Workers (or any successor index), as
22 published by the Bureau of Labor
23 Statistics, for the calendar year pre-
24 ceding the calendar year in which the
25 adjustment is being made by the an-

1 nual value of such index (or suc-
2 cessor) for the calendar year ending
3 December 31, 2012; and

4 “(II) multiplying such dollar
5 amount by the quotient obtained
6 under subclause (I).

7 “(ii) ROUNDING.—Each dollar
8 amount determined under clause (i) shall
9 be rounded to the nearest multiple of
10 \$100,000.”.

11 **SEC. 3. EFFECTIVE DATE.**

12 This Act and any amendment made by this Act shall
13 take effect on the date that is 90 days after the date of
14 the enactment of this Act.

 Passed the House of Representatives January 14,
2014.

Attest:

KAREN L. HAAS,
Clerk.