

Union Calendar No. 243

113TH CONGRESS
2^D SESSION

H. R. 2274

[Report No. 113-326]

To amend the Securities Exchange Act of 1934 to provide for a notice-filing registration procedure for brokers performing services in connection with the transfer of ownership of smaller privately held companies and to provide for regulation appropriate to the limited scope of the activities of such brokers.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2013

Mr. HUIZENGA of Michigan (for himself, Mr. HIGGINS, and Mr. POSEY) introduced the following bill; which was referred to the Committee on Financial Services

JANUARY 14, 2014

Additional sponsors: Mr. HECK of Nevada, Mr. SCHWEIKERT, Mr. FINCHER, Mr. ROSS, Mr. MCHENRY, Mr. LUCAS, and Ms. LOFGREN

JANUARY 14, 2014

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 6, 2013]

A BILL

To amend the Securities Exchange Act of 1934 to provide for a notice-filing registration procedure for brokers performing services in connection with the transfer of ownership of smaller privately held companies and to provide for regulation appropriate to the limited scope of the activities of such brokers.

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 “Small Business Mergers,*
5 *Acquisitions, Sales, and Brokerage Simplification Act of*
6 *2013”.*

7 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**
8 **QUISITION BROKERS.**

9 *Section 15(b) of the Securities Exchange Act of 1934*
10 *(15 U.S.C. 78o(b)) is amended by adding at the end the*
11 *following:*

12 *“(13) REGISTRATION EXEMPTION FOR MERGER*
13 *AND ACQUISITION BROKERS.—*

14 *“(A) IN GENERAL.—Except as provided in*
15 *subparagraph (B), an M&A broker and any per-*
16 *son associated with an M&A broker shall be ex-*
17 *empt from registration under this section.*

18 *“(B) EXCLUDED ACTIVITIES.—An M&A*
19 *broker or a person associated with an M&A*
20 *broker is not exempt from registration under this*
21 *paragraph if such broker or associated person*
22 *does any of the following:*

23 *“(i) Directly or indirectly, in connec-*
24 *tion with the transfer of ownership of an el-*
25 *igible privately held company, receives,*

1 *holds, transmits, or has custody of the funds*
2 *or securities to be exchanged by the parties*
3 *to the transaction.*

4 “(i) *Engages on behalf of an issuer in*
5 *a public offering of any class of securities*
6 *that is registered, or is required to be reg-*
7 *istered, with the Commission under section*
8 *12 or with respect to which the issuer files,*
9 *or is required to file, periodic information,*
10 *documents, and reports under subsection*
11 *(d).*

12 “(C) *RULE OF CONSTRUCTION.—Nothing in*
13 *this paragraph shall be construed to limit any*
14 *other authority of the Commission to exempt any*
15 *person, or any class of persons, from any provi-*
16 *sion of this title, or from any provision of any*
17 *rule or regulation thereunder.*

18 “(D) *DEFINITIONS.—In this paragraph:*

19 “(i) *CONTROL.—The term ‘control’*
20 *means the power, directly or indirectly, to*
21 *direct the management or policies of a com-*
22 *pany, whether through ownership of securi-*
23 *ties, by contract, or otherwise. There is a*
24 *presumption of control for any person*
25 *who—*

1 “(I) is a director, general partner,
2 member or manager of a limited liabil-
3 ity company, or officer exercising exec-
4 utive responsibility (or has similar sta-
5 tus or functions);

6 “(II) has the right to vote 20 per-
7 cent or more of a class of voting securi-
8 ties or the power to sell or direct the
9 sale of 20 percent or more of a class of
10 voting securities; or

11 “(III) in the case of a partnership
12 or limited liability company, has the
13 right to receive upon dissolution, or
14 has contributed, 20 percent or more of
15 the capital.

16 “(ii) *ELIGIBLE PRIVATELY HELD COM-*
17 *PANY.—The term ‘eligible privately held*
18 *company’ means a company that meets both*
19 *of the following conditions:*

20 “(I) The company does not have
21 any class of securities registered, or re-
22 quired to be registered, with the Com-
23 mission under section 12 or with re-
24 spect to which the company files, or is
25 required to file, periodic information,

1 documents, and reports under sub-
2 section (d).

3 “(II) In the fiscal year ending im-
4 mediately before the fiscal year in
5 which the services of the M&A broker
6 are initially engaged with respect to
7 the securities transaction, the company
8 meets either or both of the following
9 conditions (determined in accordance
10 with the historical financial account-
11 ing records of the company):

12 “(aa) The earnings of the
13 company before interest, taxes, de-
14 preciation, and amortization are
15 less than \$25,000,000.

16 “(bb) The gross revenues of
17 the company are less than
18 \$250,000,000.

19 “(iii) M&A BROKER.—The term ‘M&A
20 broker’ means a broker engaged in the busi-
21 ness of effecting securities transactions sole-
22 ly in connection with the transfer of owner-
23 ship of an eligible privately held company,
24 regardless of whether the broker acts on be-
25 half of a seller or buyer, through the pur-

1 *chase, sale, exchange, issuance, repurchase,*
2 *or redemption of, or a business combination*
3 *involving, securities or assets of the eligible*
4 *privately held company, if the broker rea-*
5 *sonably believes that—*

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

16 *“(II) if any person is offered secu-*
17 *rities in exchange for securities or as-*
18 *sets of the eligible privately held com-*
19 *pany, such person will, prior to becom-*
20 *ing legally bound to consummate the*
21 *transaction, receive or have reasonable*
22 *access to the most recent year-end bal-*
23 *ance sheet, income statement, statement*
24 *of changes in financial position, and*
25 *statement of owner’s equity of the*

1 *issuer of the securities offered in ex-*
2 *change, and, if the financial statements*
3 *of the issuer are audited, the related re-*
4 *port of the independent auditor, a bal-*
5 *ance sheet dated not more than 120*
6 *days before the date of the offer, and*
7 *information pertaining to the manage-*
8 *ment, business, results of operations for*
9 *the period covered by the foregoing fi-*
10 *nancial statements, and material loss*
11 *contingencies of the issuer.*

12 *“(E) INFLATION ADJUSTMENT.—*

13 *“(i) IN GENERAL.—On the date that is*
14 *5 years after the date of the enactment of*
15 *the Small Business Mergers, Acquisitions,*
16 *Sales, and Brokerage Simplification Act of*
17 *2013, and every 5 years thereafter, each dol-*
18 *lar amount in subparagraph (D)(ii)(II)*
19 *shall be adjusted by—*

20 *“(I) dividing the annual value of*
21 *the Employment Cost Index For Wages*
22 *and Salaries, Private Industry Work-*
23 *ers (or any successor index), as pub-*
24 *lished by the Bureau of Labor Statis-*
25 *tics, for the calendar year preceding*

1 *the calendar year in which the adjust-*
2 *ment is being made by the annual*
3 *value of such index (or successor) for*
4 *the calendar year ending December 31,*
5 *2012; and*

6 *“(II) multiplying such dollar*
7 *amount by the quotient obtained under*
8 *subclause (I).*

9 *“(ii) ROUNDING.—Each dollar amount*
10 *determined under clause (i) shall be round-*
11 *ed to the nearest multiple of \$100,000.”.*

12 **SEC. 3. EFFECTIVE DATE.**

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

Amend the title so as to read: “A bill 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.”.

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