

## Union Calendar No. 303

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 686

[Report No. 114-400]

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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### IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2015

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 28, 2016

Additional sponsors: Mr. CURBELO of Florida, Ms. LOFGREN, Mr. LUCAS, Mr. JOLLY, Ms. KUSTER, Mr. EMMER of Minnesota, Mr. ROSS, and Mr. BRADY of Texas

JANUARY 28, 2016

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **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.

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 Merg-  
5 ers, Acquisitions, Sales, and Brokerage Simplification Act  
6 of 2015”.

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 shall be ex-  
16 empt from registration under this section.

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

21                               “(i) Directly or indirectly, in connec-  
22 tion with the transfer of ownership of an  
23 eligible privately held company, receives,  
24 holds, transmits, or has custody of the

1 funds or securities to be exchanged by the  
2 parties to the transaction.

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

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

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

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

1           “(I) is a director, general part-  
2           ner, member or manager of a limited  
3           liability company, or officer exercising  
4           executive responsibility (or has similar  
5           status or functions);

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

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

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

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

1                   tion, documents, and reports under  
2                   subsection (d).

3                   “(II) In the fiscal year ending  
4                   immediately 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 com-  
8                   pany meets either or both of the fol-  
9                   lowing conditions (determined in ac-  
10                  cordance with the historical financial  
11                  accounting records of the company):

12                   “(aa) The earnings of the  
13                   company before interest, taxes,  
14                   depreciation, and amortization  
15                   are 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, and any person  
21                   associated with a broker, engaged in the  
22                   business of effecting securities transactions  
23                   solely in connection with the transfer of  
24                   ownership of an eligible privately held com-  
25                   pany, regardless of whether the broker acts

1 on behalf of a seller or buyer, through the  
2 purchase, sale, exchange, issuance, repur-  
3 chase, or redemption of, or a business com-  
4 bination involving, securities or assets of  
5 the eligible privately held company, if the  
6 broker reasonably believes that—

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

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

1           cial position, and statement of owner’s  
2           equity of the issuer of the securities  
3           offered in exchange, and, if the finan-  
4           cial statements of the issuer are au-  
5           dited, the related report of the inde-  
6           pendent auditor, a balance sheet  
7           dated not more than 120 days before  
8           the date of the offer, and information  
9           pertaining to the management, busi-  
10          ness, results of operations for the pe-  
11          riod covered by the foregoing financial  
12          statements, and material loss contin-  
13          gencies of the issuer.

14          “(E) INFLATION ADJUSTMENT.—

15                 “(i) IN GENERAL.—On the date that  
16                 is 5 years after the date of the enactment  
17                 of the Small Business Mergers, Acquisi-  
18                 tions, Sales, and Brokerage Simplification  
19                 Act of 2015, and every 5 years thereafter,  
20                 each dollar amount in subparagraph  
21                 (D)(ii)(II) shall be adjusted by—

22                         “(I) dividing the annual value of  
23                         the Employment Cost Index For  
24                         Wages and Salaries, Private Industry  
25                         Workers (or any successor index), as



1 published by the Bureau of Labor  
2 Statistics, for the calendar year pre-  
3 ceding the calendar year in which the  
4 adjustment is being made by the an-  
5 nual value of such index (or suc-  
6 cessor) for the calendar year ending  
7 December 31, 2012; and

8 “(II) multiplying such dollar  
9 amount by the quotient obtained  
10 under subclause (I).

11 “(ii) ROUNDING.—Each dollar  
12 amount determined under clause (i) shall  
13 be rounded to the nearest multiple of  
14 \$100,000.”.

15 **SEC. 3. EFFECTIVE DATE.**

16 This Act and any amendment made by this Act shall  
17 take effect on the date that is 90 days after the date of  
18 the enactment of this Act.

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